Texas Register

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Artist: *Christopher Neloms*
12th Grade
Forest Brook High School

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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

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 June 24, 2002.

Appointed to the Concho Valley Council of Governments Regional Review Committee for terms to expire on January 1, 2003, Judge Michael D. Brown of San Angelo, Councilman Lou Emma Decker of Menard, Mayor Martin Lee of Bronte, Councilman Matthew S. Mills of Brady, Mayor John Nikolauk of Eldorado, Councilwoman Net Wescott of Mertzon.

Appointed to the Concho Valley Council of Governments Regional Review Committee for terms to expire on January 1, 2004, Commissioner Karl Bookter-Chair of San Angelo, Judge Mike Elkins of Big Lake, Judge John R. Jones of Ozona, Commissioner Charles H. Reichenan of Mason, Commissioner August Ilee Simon of Roosevelt, Mayor James B. Stephen of Sonora.

Appointed to the Texas State Board of Podiatric Medical Examiners for terms to expire on July 10, 2007, Carol Lee Roberts Baker of Houston (replacing Alex Garcia of Corpus Christi whose term expired), Donald Matthew Lynch, D.P.M. of Troy (replacing Teresa Barrios-Ogden of San Antonio whose term expired), Bruce A. Scudday, D.P.M. of El Paso (replacing Charles Curchwell of Carrollton whose term expired).

Appointed to the Texas Workers' Compensation Commission for a term to expire on February 1, 2007, Eddie Wilkerson of LaPorte (replacing Jack Abla of Kilgore whose term expired).

Rick Perry, Governor

TRD-200204014

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.

Requests for Opinions

RQ-0560-JC

The Honorable Roy DeFriend, District and County Attorney, Limestone County, 200 West State Street, Suite 110, Groesbeck, Texas 76642

Re: Determination of a bail bondsman's bonding capacity with regard to persons held in his county's jail on charges from another county (Request No. 0560-JC)

Briefs requested by July 20, 2002

RQ-0561-JC

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

Re: Eligibility for a tax exemption of a community housing development corporation that is the general partner in a limited partnership that owns improved real estate for the purpose of providing low income housing units (Request No. 0561-JC)

Briefs requested by July 20, 2002

RQ-0562-JC

The Honorable J.E. "Buster" Brown, Chair, Natural Resources Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068

Re: Whether the "recapture" provisions of chapter 41, Education Code, apply to that portion of local property tax revenues attributable to a school district's tax revenue rate in excess of $1.50 per $100 valuation (Request No. 0562-JC)

Briefs requested by July 24, 2002

RQ-0563-JC

The Honorable J.E. "Buster" Brown, Chair, Natural Resources Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068

Re: Authority of the Texas Department of Transportation to impede construction and maintenance of lines and facilities by gas and electric utilities along controlled-access highways (Request No. 0563-JC)

Briefs requested by July 24, 2002

For further information, please access the Attorney General's website at www.oag.state.tx.us. *or call the Opinion Committee at 512/ 463-2110.*

TRD-200204018
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 26, 2002

Opinions

Opinion No. JC-0515

The Honorable Warren Chisum, Chair, House Committee on Environmental Regulation, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910.

Re: Whether the provisions of House Bill 2912 on regulated entities' compliance history authorize the Texas Natural Resource Conservation Commission to consider compliance history that occurred prior to February 1, 2002 (RQ-0482-JC)

S U M M A R Y

Section 5.753 of the Water Code, adopted by House Bill 2912 of the Seventy-seventh Legislature, requires the Texas Natural Resource Conservation Commission to establish the components of compliance history by rule. The provision of the Commission rule that establishes the time period for compliance history as five years before the agency's regulatory authority is initiated or invoked, including compliance history from before February 1, 2002, is consistent with section 5.753. The time period is also consistent with section 18.05(i) of House Bill 2912, an effective date provision applicable to the changes in the definition of compliance history made by section 5.753 and the rule implementing it.

It is unnecessary to decide whether a regulated entity has a vested right under article I, section 16 of the Texas Constitution to have its compliance history determined according to the law in effect when the relevant events took place. Even if such a right exists, the compliance history rule applies to programs designed to protect the public health, safety, and welfare, and the Legislature is not precluded by article I, section

16 of the Texas Constitution from enacting retroactive statutes that are necessary to safeguard these interests.

Opinion No. JC-0516

The Honorable Robert B. Scheske Gonzales County Attorney P. O. Box 3 Gonzales, Texas 78629-0003

Re: Applicability of article 103.0031 of the Code of Criminal Procedure when a defendant has failed to appear in a Class C misdemeanor case (RQ-0485-JC)

S U M M A R Y

Article 103.0031 of the Code of Criminal Procedure is inapplicable in a case in which a justice of the peace has informally suggested an acceptable fine.

Opinion No. JC-0517

The Honorable M.P. "Dexter" Eaves Victoria County Criminal District Attorney 210 West Constitution Victoria, Texas 77901.

Re: Whether section 623.011 of the Transportation Code provides the Texas Department of Transportation with discretion to decide whether to issue a permit authorizing an oversize or overweight motor vehicle to operate on public roads (RQ-0487-JC)

S U M M A R Y

Section 623.011 of the Transportation Code requires the Department of Transportation to issue a permit authorizing the operation of an oversize or overweight motor vehicle if the applicant meets the statutory requirements. See Tex. Transp. Code Ann. §623.011(a) (Vernon Supp. 2002).

Opinion No. JC-0518

The Honorable Richard J. Miller Bell County Attorney Post Office Box 1127 Belton, Texas 76513.

Re: Whether subsections (c) and (d)(4) of Local Government Code section 242.001 authorize a county and a municipality to agree to a "hybrid" mix of regulations related to plats and subdivisions of land (RQ-0492-JC)

S U M M A R Y

Section 242.001(c) of the Local Government Code, as adopted by Act of May 24, 2001, 77th Leg., R.S., ch. 1028, §1, 2001 Tex. Gen. Laws 2276, 2277 (House Bill 1445), can be harmonized with section 242.001(c), as adopted by Act of May 17, 2001, 77th Leg., R.S., ch. 736, §2, 2001 Tex. Gen. Laws 1459, 1461 (Senate Bill 873), so that the subsection (c) adopted by Senate Bill 873 applies before a municipality and a county enter an agreement under subsection (d), while the subsection (c) adopted by House Bill 1445 applies "after an agreement under Subsection (d) is executed." Tex. Loc. Gov't Code Ann. §242.001(c), as amended by Act of May 24, 2001, 77th Leg., R.S., ch. 1028, §1, 2001 Tex. Gen. Laws 2276, 2277. Under section 242.001(d)(4)(B), a municipality and a county may enter a contract adopting a unified "set of regulations related to plats and subdivisions of land" within the municipality's extraterritorial jurisdiction that combines the municipal and county regulations and that eliminates any conflicts between the two. See Tex. Loc. Gov't Code Ann. §242.001(d)(4)(B) (Vernon Supp. 2002).

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

TRD-200204019
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 26, 2002

TEXAS ETHICS COMMISSION

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

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

Advisory Opinion Request

AOR-497. The Texas Ethics Commission has been asked whether an individual who now holds a federal judicial office may use political contributions accepted in connection with a state judicial office to make expenditures in connection with the federal judicial office.

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

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

TRD-200203886
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: June 21, 2002

EMERGENCY RULES

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

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

TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. INSURANCE PROGRAMS

SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH

34 TAC §§41.33 - 41.35

The Teacher Retirement System of Texas is renewing the effectiveness of the emergency adoption of new §§41.33-41.35 for a 60-day period. The text of the new section was originally published in the March 15, 2002 issue of the *Texas Register* (27 TexReg 1951).

Note that the expiration date in this publication was incorrectly stated as July 24, 2002. The correct expiration date is June 26, 2002 and the 60-day period should be calculated from this date.

In addition, emergency amendments to §41.33 were filed on June 6, 2002 and will be published in the June 21, 2002 issue. This renewal applies to the effectiveness of those amendments as well.

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

Filed with the Office of the Secretary of State on June 20, 2002.

TRD-200203863
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Effective Date: June 20, 2002
Expiration Date: August 25, 2002
For further information, please call: (512) 542-6115

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 18. TELECOMMUNICATIONS INFRASTRUCTURE FUND BOARD

CHAPTER 471. OPERATING RULES OF THE TELECOMMUNICATIONS INFRASTRUCTURE FUND BOARD

1 TAC §471.55

The Telecommunications Infrastructure Fund Board (TIFB) proposes new §471.55, concerning Minimum Standards for the Provision of Telemedicine Medical Services. The new section is required by S.B. 789, 77th Leg., R.S.(2001) and was developed in conjunction with the Health and Human Services Commission (HHSC). The proposed provisions will establish a joint rule of the two agencies.

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

Mr. Jameson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the new rule will be that the citizens of Texas will benefit from technologically performing, interoperable, private, and secure systems at Medicaid participating clinics using telemedicine devices. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Dirk Jameson, Executive Director, 1000 Red River, Ste. E208, Austin, Texas 78701, or by electronic mail to djameson@tifb.state.tx.us. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new section is proposed under §57.045(d)(2) of the Texas Utilities Code, which provides the TIFB with the authority to promulgate rules to reasonably affect the purposes of this chapter.

The new section is also proposed under the Government Code, §531.02161. The TIFB interprets this section to require the TIFB and HHSC to adopt joint rules establishing and adopting minimum standards for an operating system used in the provision of telemedicine medical services by a health care facility participating in the state Medicaid program, including standards for electronic transmission, software, and hardware.

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

§471.55. Minimum Standards for the Provision of Telemedicine Medical Services.

(a) Purpose. This section outlines the minimum standards for an operating system used in the provision of telemedicine services by a health care facility participating in the state Medicaid program, including standards for electronic transmission, software, and hardware. These standards were developed in conjunction with the Health and Human Services Commission. The proposed provisions will establish a joint rule of the two agencies. The minimum standards are intended to ensure, as much as it is possible, the continuous and long-term use of telemedicine equipment in a changing medical and technological environment. The key issues are to develop interoperability, compatibility, scalability, accessibility, and reliability with future systems. The standards also address minimum security standards which ensure the integrity, privacy, and/or safekeeping of data in normal use of telemedicine technology. Where there is a question regarding security standards, refer to the Department of Information Resources, "Practices for Protecting Information Resources Assets."

(b) Definition of "telemedicine." Section 57.042 of the Texas Utilities Code defines telemedicine and states:

(1) Telemedicine means medical services delivered by telecommunications technologies to rural or under served public not-for-profit health care facilities or primary health care facilities in collaboration with an academic health center and an associated teaching hospital or tertiary center or with another public not-for-profit health care facility; and

(2) Telemedicine includes consultive services, diagnostic services, interactive video consultation, teleradiology, telepathology, and distance education for working health care professionals.

(c) Scope. The scope of these standards includes equipment, assets, practices, and technologies used in telemedicine medical services by a health care facility participating in the state Medicaid program, including standards for electronic transmission, software, and hardware.

(d) Technical Standards. Whenever possible, implementations shall adhere to industry- standard technologies and/or practices, and all components shall be Y2K compatible. The minimum technical standards for a telemedicine application or system follow.

(1) Workstations.

(A) Operating systems shall be current off-the-shelf operating systems, capable of being upgraded as new versions become available;

(B) Software must be properly licensed with suitable maintenance contract signed;

(C) A three-year warranty shall protect equipment. The manufacturer or vendor must be able to support the system architecture throughout the warranty period, including repair parts;

(D) Processors shall be from Intel, Motorola, AMD, IBM, or other manufacturers of compatible equipment. Processing speeds and other processor-related specifications shall be sufficient to accommodate the operating system and the application for a trouble-free telemedical practice;

(E) Memory shall be of sufficient quantity to run the operating system and application. Boards shall have physical and logical room to accommodate incremental upgrades;

(F) Network adapter shall be of appropriate speed and characteristic to address compatibility, latency, and quality of service issues; and

(G) After installation of the operating systems, drivers, and applications, each workstation shall have sufficient storage space remaining in order to allow room for actual usage. Access speeds shall be sufficient to accommodate compatibility, latency, and quality of service issues.

(2) Servers.

(A) The servers may be single or multi-processor capable, shall have a three-year warranty, and shall be compatible with operating system and application;

(B) Servers shall provide sufficient online time for session data to be saved and the server to be powered down properly; and

(C) Servers shall allow for daily copies of data, historical archiving, and efficient restoration of data.

(3) Network and Transmission.

(A) All transmissions will be of sufficient speed for the intended application;

(B) Transmission media and systems shall be of any kind that provides sufficient range, speed, security, and error-correction to maintain performance, data integrity, and privacy. Switches, hubs, routers, and access points shall be placed in a secure location. Installations and terminations must conform to building standards and all applicable state and local codes, and be conducted by a trained, certified technician; and

(C) Transmission protocols shall be compatible with TCP/IP, H.324, and/or H.323.

(4) Video Conferencing System.

(A) In general, video conferencing shall permit appropriate resolution, quality of service, and latency for the purpose intended. Fully integrated set top or room systems shall have sufficient throughput for medical communication and/or diagnostics. For multipoint conferencing, 384 Kbps is an acceptable minimum. For specific standards based on bandwidth capacity, see Appendix;

(B) Connectivity shall include LAN, WAN, plain analog telephone service, remote access service, and/or internet capability;

(C) The video conferencing system shall communicate using H.323 and/or H.324 protocols. The system must provide interactive two-way video with two-way audio and two-way data. All video conferencing equipment proposed must support International Telecommunications Union-Telecommunications (ITU-T) recommendations. Any system connecting to an H.323 network is required to provide its own H.323 compliant data output and/or conversion ability. For legacy systems, this could be accomplished by the addition of a protocol converter, gateway, or other device;

(D) Gateway and protocol converter shall be of sufficient speed, robustness, compatibility, and accuracy to provide protocol processing services necessary for the telemedicine implementation;

(E) The video conferencing system must have a transmitted picture frame rate suitable for the intended application, and must be capable of 30 frames per second at 384 Kbps. All applicable equipment shall be UL and FCC Class A approved;

(F) Installation technicians shall have training conducted by the manufacturer and installations shall be made in accordance with manufacturers' practices and guidelines;

(G) System acceptance testing shall be done within 30 days of installation, subject to network availability. At a minimum, these tests shall include:

(i) video performance with minimal fades, dropouts, cyclical dropouts, or noise;

(ii) correct operation of the video terminal equipment;

(iii) correct operation of PC equipment; and

(iv) capability of 30 frames per second at 384 Kbps.

(H) Warranty shall be in effect for three years from the date of acceptance for all hardware and software, with next business day shipment for hardware replacement. At a minimum, all equipment shall be warranted against defects or failure of design, materials, and workmanship. Defective equipment shall be repaired or replaced at no cost to the telemedicine facility. The warranty shall cover any costs to bring the equipment to full function such as labor and shipping and handling charges. The vendor will note any days, times, and holidays when their personnel will not be available to take or process warranty-related inquiries. The telemedicine facility shall be provided with a toll-free telephone number, and an electronic mail address to use to report non-functioning equipment subject to the warranty coverage. Equipment warranty repair will be completed on a remove and replace basis, where the equipment will be restored to full functionality within a minimum time. Defective equipment that must be replaced, shall be replaced with new or like-new equipment; and

(I) Technical support shall begin on the date of acceptance through the three-year warranty period. Technical support shall be available on all equipment hardware and software, by either toll-free telephone number, online, or both. The vendor shall note any hours, days, or holidays when technical support calls will not be taken.

(5) Additional Equipment, Software, and Services.

(A) Printers shall be of sufficient resolution and speed, and shall accommodate required paper sizes and types;

(B) Scanners, digital cameras, video camcorders, video capture cards, and other image capturing devices shall be capable of treating digital images at a sufficient size, resolution, compression, data integrity, speed, media, media handling, and/or color to meet the application requirements;

(C) Software shall provide sufficient compatibility, capability, performance, security, management, and/or communication services necessary to apply or support the telemedicine implementation. It shall be capable of being upgraded, and fully licensed to the operating entity;

(D) Still image capture/store and forward, and streaming video equipment, in regard to digital content of both transmission methods, shall be of sufficient size, resolution, clarity, color, and quality of service, for both audio and video, to perform a medical evaluation, assessment, or medical consultation. Still image capture/store and forward refers to the ability to capture or record images, scanned documents, and clinical notes, which are then transmitted at a later time. Video streaming usually refers to real time video transmission or examination session.

(E) All other equipment, components, and/or services not listed specifically, but used in conjunction with telemedicine implementations, shall support the performance of the implementation; and

(F) Medical equipment used in conjunction with telemedicine must meet 510K federal certification. Examples of medical equipment include: spirometers, X-ray, digital X-ray scanners, ultrasound machines, examination cameras, ophthalmoscope, fundus scope, diagnostic printers, and stethoscope.

(6) Exceptions. Implementations which fall below or outside of the aforementioned technical standards must, nevertheless, be able to demonstrate the long-term effectiveness and sustainability of the specific telemedicine implementation. Such implementations shall still comply with the Technical Practices Requirements described in Section 471.55(7) below, and state and federal law.

(7) Technical Practices Standards. Technical implementations shall support security, privacy, integrity, authentication, and business continuity practices as applied to telemedicine activities as follows:

(A) All access to data and transmission thereof must require unique user identification and verification ensured by the system. Technology shall support the authentication of users and provide logs to prove such authentication;

(B) Data shall be verifiable as to its origin. Technologies and business practices shall work together to ensure that genuine, authenticated data is transmitted through the network and is identifiable as such to the users;

(C) Equipment shall be sufficiently physically safeguarded to prevent unauthorized access. This includes: keyboard, monitor, input devices including any monitoring and diagnostic instruments, data storage components, cable rooms, and servers. Institutional management shall use appropriate technologies and business practices to ensure controlled access;

(D) Telemedicine equipment and applications shall have adequate logical and physical security mechanisms activated to ensure that collection of data does not compromise the privacy of the data;

(i) As to system integrity, only authorized users and patients shall have access to the physical equipment. Users' access shall be limited to those system features necessary to perform their functions; and

(ii) As to program integrity, each health care facility participating in the program shall develop a policy. Such policy shall describe roles and responsibilities of users, owners, and management, in order to protect the equipment, ensure accurate data collection, and provide for privacy and data protection. The policy shall be communicated to staff and enforced by management, including a review of the policy no less than biennially.

(E) Copies of equipment documentation regarding the proper use of equipment, including software and hardware, shall be easily accessible to users. This documentation includes: user manuals, technical documentation, trouble history, and any notes gathered as a result of troubleshooting activity;

(F) Information storage, maintenance, and transmission:

(i) Storage of electronic medical data shall have appropriate fault tolerance and business continuity measures. These measures shall include one or more industry standard implementations such as redundancies and disaster recovery planning in order to reduce the likelihood of permanent loss of data;

(ii) Data and system integrity shall be maintained and organized by qualified personnel. Sufficient maintenance practices or technologies shall be in place to effectively reduce failure incidences and/or their durations; and

(iii) Networks shall, as much as it is reasonable, be protected from undesired intrusion and vandalism. All data transmissions, including classified data transmissions, shall be protected by adequate implementations of security technology.

(G) Technology shall support the synchronization of patient profile data. Business processes and technology shall provide an effective means to authenticate and organize patient information.

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

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203942
Dirk Jameson
Executive Director
Telecommunications Infrastructure Fund Board
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For further information, please call: (512) 344-4306

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER A. REGULATED LOAN LICENSES

DIVISION 2. APPLICATION FOR LICENSE AND TRANSFER OF LICENSE

7 TAC §§1.30 - 1.34, 1.36 - 1.40

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

The Finance Commission of Texas (the commission) proposes the repeal of 7 TAC §§1.30-1.34 and §§1.36 - 1.40, concerning licensing procedures. As part of an agency rule review the commission is concurrently proposing new subchapters to relocate these rules in a more logical order, in this issue of the *Texas Register*.

This repeal is necessary because the sections have been rewritten and incorporated into new subchapters.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period of the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Ms. Pettijohn also has determined that for each year of the first five-year period the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal is the logical relocation of these rules. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed repeal may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by an e-mail to leslie.pettijohn@occc.state.tx.us.

The repeal is proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are Chapter 342, Texas Finance Code and the rest of Title 4.

§1.30. Definitions.

§1.31. Filing of New Application.

§1.32. Transfer of License.

§1.33. Processing of Application.

§1.34. Change in Form or Proportionate Ownership.

§1.36. Amendments to Pending Application.

§1.37. Relocation of Licensed Offices.

§1.38. Designation of Active/Inactive Status.

§1.39. Fees.

§1.40. Applications and Notices as Public Records.

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

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TRD-200203948

Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
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For further information, please call: (512) 936-7640

DIVISION 6. LOANS MADE UNDER CHAPTER 342

7 TAC §§1.101 - 1.107

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

The Finance Commission of Texas (the commission) proposes the repeal of 7 TAC §§1.101 - 1.107, concerning general provisions of regulated lenders. As part of an agency rule review the commission is concurrently proposing new subchapters to relocate these rules in a more logical order, in this issue of the *Texas Register*.

This repeal is necessary because the sections have been rewritten and incorporated into new subchapters.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period of the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Ms. Pettijohn also has determined that for each year of the first five-year period the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal is the logical relocation of these rules. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed repeal may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by an e-mail to leslie.pettijohn@occc.state.tx.us.

The repeal is proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are Chapter 342, Texas Finance Code and the rest of Title 4.

§1.101. Purpose and Scope.

§1.102. Definitions.

§1.103. Responsibility for Acts of Agents.

§1.104. Knowledge of Laws and Regulations Required.

§1.105. Attempted Evasion of Applicability of Chapter.

§1.106. Multiple Licenses.

§1.107. Loans by Mail.

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

Filed with the Office of the Secretary of State on June 24, 2002.

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Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
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For further information, please call: (512) 936-7640

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§1.101 - 1.107

The Finance Commission of Texas (the commission) proposes new 7 TAC Subchapter A, §§1.101 - 1.107, concerning General Provisions. As part of an agency rule review, the commission is concurrently proposing the repeal of 7 TAC §§1.101 - 1.107, concerning general provisions of regulated lenders in this issue of the *Texas Register*.

The proposed new subchapter relocates the proposed repealed rules in a more logical order providing easier access for the public.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period of the new sections as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the new sections.

Ms. Pettijohn also has determined that for each year of the first five-year period the new sections as proposed will be in effect, the public benefit anticipated as a result of the new sections is the logical relocation of rules for easier public use. There is no anticipated cost to persons who are required to comply with the new sections as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed new sections may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by an e-mail to leslie.pettijohn@occc.state.tx.us.

The new sections are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed new sections are Chapter 342, Texas Finance Code and the rest of Title 4.

§1.101. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to assist in the administration and enforcement of Chapter 342 of the Texas Finance Code.

(b) Scope.

(1) This chapter applies to all persons engaged in the business of making, transacting, or negotiating loans subject to Chapter 342 of the Texas Finance Code. As such, this chapter only applies to lenders and brokers in the business of making, transacting, or negotiating loans that:

(A) contract for, charge, or receive interest in excess of 10% per year;

(B) are loans extended primarily for personal, family, or household use; and

(C) are either unsecured or secured by a lien on real estate or personal property under a secondary mortgage loan. This includes term loans extended primarily for personal, family, or household purposes.

(2) This also includes a loan broker who arranges, negotiates, or brokers loans for a lender that funds the loan. This chapter does not apply to any loans made under Chapters 301 - 339 of the Texas Finance Code, including, for example, commercial and agricultural loans.

§1.102. Definitions.

Words and terms used in this chapter that are defined in Chapter 342 of the Texas Finance Code have the same meanings as defined in Chapter 342. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acquisition Charge--An interest charge authorized for making the cash advance under authority of §342.252, Texas Finance Code.

(2) Add-on interest--A method for calculating precomputed interest in which the borrower agrees to pay the total of payments, which includes both interest and principal, as opposed to agreeing to pay the principal plus interest as it accrues at a certain rate. Add-on interest is calculated at the outset of a loan on the cash advance for the full term, as if the principal did not decline over the course of the loan. For example, a $1,000 loan with 12 monthly installments and an add-on interest amount of $8.00 per hundred per annum would have a total charge of interest of $80 and monthly payments of $90, yielding an annual percentage rate ("APR") of 14.45%.

(3) Amount Financed--The amount of money which is used, forborne, or detained and upon which interest is charged. The cash advance plus any other amounts that are financed by the creditor are included. Any points or other prepaid finance charges, excluding the administrative loan fee, that are not paid at closing and that are financed as part of the transaction are included in the amount financed. This definition is only applicable for the purposes of this subchapter for computing earnings, deferments, maximum charges, and determining refunds of unearned interest. It is not intended to be analogous with the similar term that is used in the Truth-in-Lending Act (15 U.S.C. §1601 et seq.).

(4) Authorized Charge--Any charge authorized by applicable Texas law to be included in the credit transaction.

(5) Authorized Lender--A person who has obtained a license from the commissioner, or a bank, savings bank, savings and loan association, or credit union doing business under the laws of this State or the United States. Banks chartered in other states insured by the Federal Deposit Insurance Corporation are included in this term. Separate entities that are subsidiaries or affiliates of licensees or authorized banks, savings banks, savings and loan associations, or credit unions are not authorized lenders unless they meet the required elements of the definition of an authorized lender in their own right.

(6) Commissioner--Consumer Credit Commissioner of the State of Texas.

(7) Date of Consummation--The date of closing or execution of a loan contract.

(8) Default Charge or Late Charge--The additional interest charge for late payment on a loan.

(9) Deferment Charge--The payment of an additional interest charge to defer the payment date of a scheduled payment on a contract.

(10) Dual Interest Coverage--Insurance that provides benefits to both the holder of a loan and the borrower in the event of a loss of the security covered by the policy. The policy contains a loss payable clause or endorsement that provides benefits that are payable at the discretion of the holder.

(11) Installment Account Handling Charge (IAHC)--An interest charge authorized for making a loan under §342.252, Texas Finance Code.

(12) Installment Loan--Any type of closed-end loan with multiple scheduled payments.

(13) Interest-bearing Loan--A loan in which the borrower agrees to pay the principal and interest that accrues at a certain periodic rate.

(14) Interpretation Letter--A formal interpretation of Title 4 of the Texas Finance Code made by the Commissioner and approved by the Finance Commission of Texas under Texas Finance Code §14.108.

(15) Licensee--Any person who has been issued a consumer loan license pursuant to Chapter 342 of the Texas Finance Code. Another name for a "consumer loan license" is "regulated loan license."

(16) Making a Loan--The act of making a loan is either the determination of the credit decision to provide the loan, or the act of funding the loan or transferring money from the lender to the borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the loan.

(17) Negotiating a Loan--The process of submitting and considering offers between a borrower and a lender with the objective of reaching agreement on the terms of a loan. The act of passing information between the parties can, by itself, be considered "negotiation" if it was part of the process of reaching agreement on the terms of a loan. "Negotiation" involves acts which take place before an agreement to lend or funding of a loan actually occurs.

(18) OCCC--Office of Consumer Credit Commissioner of the State of Texas.

(19) Precomputed Loan--A loan in which the borrower agrees to pay the total of payments that includes both principal and all anticipated interest through the full term of the loan. If a borrower prepays a precomputed loan, the borrower is entitled to a rebate of all unearned interest and unearned charges.

(20) Prepaid Interest--Interest paid separately in cash or by check before or at consummation in a transaction, or withheld from the proceeds of the credit at any time. Some common terms such as points, discounts, and origination fees have been used to identify this charge.

(21) Principal--The capital sum of the debt including any interest capitalized and added to the cash advance at the inception of the loan. This is the amount of money which is used, forborne, or detained and upon which interest is charged. The principal amount does not include any interest accrued after the inception of the loan, such as default charges.

(22) Pro Rata Method--A formula for determining the amount of unearned interest or other charges, such as insurance, to be refunded following prepayment or acceleration by applying the amounts to equal unit periods. This formula assumes that interest or other charges are earned in direct proportion to the time that a loan has been outstanding.

(23) Rebate--Refund of all or part of a precomputed charge or interest.

(24) Regulated Loan--Loan made under the authority of Chapter 342, Texas Finance Code.

(25) Renewal or Refinance--A new loan contract that includes, in whole or in part, the net balance of one or more existing loan contracts.

(26) Simple Annual Rate--The interest rate under the loan agreement expressed as a percentage rate per year employing the U.S. Rule method.

(27) Sum of the Monthly Balances or Sum of the Periodic Balances Method--Another formula for determining the amount of unearned interest or other charges to be refunded. This is a variant of the Rule of 78s. It provides that the fraction of the contract interest to be rebated at any given time in the loan term is the sum of the monthly loan balances for the months remaining in the originally scheduled loan term divided by the sum of the monthly balances for all of the months in the scheduled loan term. For example, for a 6-month loan of $600 which is scheduled to be repaid in $100 monthly installments, the rebate fraction after two months would be: 400 + 300 + 200 + 100 divided by 600 + 500 + 400 + 300 + 200 + 100 = 1000/2100 = 10/21 = 0.476 (rounded). For any loan which is paid off in equal installments, the sum of the balances method and the Rule of 78s will provide identical rebates. If, however, a loan schedule contains unequal payments and especially where the debt is retired by a final balloon payment, the rebates under the two formulas will be different.

(28) Term Loan--A loan made repayable in a single payment.

(29) Transacting a Loan--Any of the significant events associated with the lending process through funding, including the preparation, negotiation and execution of loan documents and the transfer of money by the lender to the borrower or to a third party on the borrower's behalf. This also includes the act of arranging a loan.

(30) United States Rule--Ruling of United States Supreme Court in Story v. Livingston, 38 U.S. (13 Pet.) 369, 371 (1839) that, in partial payments on a debt, each payment is applied first to interest and any remainder reduces the principal. Under this rule, accrued but unpaid interest cannot be added to the principal and interest cannot be compounded.

§1.103. Responsibility for Acts of Agents.

A licensee is responsible for the acts and omissions of its officers, directors, employees, and agents in the conduct of the licensee's business.

§1.104. Knowledge of Laws and Regulations Required.

Each officer, director, employee, and agent of a licensee shall have a working knowledge of Chapter 342, Texas Finance Code its implementing regulations, and other pertinent state and federal statutes and regulations that apply to their business.

§1.105. Attempted Evasion of Applicability of Chapter.

A "device, subterfuge, or pretense to evade the application of this title," as used in §342.051(b), Texas Finance Code refers to any transaction:

(1) that in form may appear on its face to be something other than a loan, but in substance meets the definition of a loan as defined in §301.002(a)(10), Texas Finance Code; and

(2) in which more than 10% annual interest, in substance, is being contracted for, charged or received.

§1.106. Multiple Licenses.

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in §342.052(b), Texas Finance Code are to be construed as follows.

(1) Make. Loans are "made" by the office or offices where either the credit decision is made or the cash advance is disbursed.

(2) Negotiate and Arrange. Loans are "negotiated" or "arranged" in the office or offices that received any information preliminary to a credit decision on a prospective borrower or received the executed application, agreement, or other necessary loan documentation.

(3) Collect. Loans are "collected" in the office or offices from which attempts are made to collect past-due payments from the borrowers under a loan. The mere receipt and accounting of payments does not constitute "collection."

(b) Application. Any office making, negotiating, arranging, or collecting loans must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third and collects past- due payments from another, all of these offices must be licensed. On the other hand, an office that merely receives, records, accounts for, processes payments need not be licensed.

§1.107. Loans by Mail.

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in §342.053(b), Texas Finance Code are to be construed as follows.

(1) Make. Loans by mail are "made" by the office or offices where either the credit decision is made or the cash advance is disbursed.

(2) Negotiate and Arrange. Loans by mail are "negotiated" or "arranged" in the office or offices that either provided the borrower a loan application, a loan agreement, or other document necessary to set up a loan transaction or received the executed application, agreement, or other necessary loan documentation.

(3) Collect. Loans by mail are "collected" in the office or offices from which attempts are made to collect past-due payments from the borrowers under a loan. The mere receipt and accounting of payments does not constitute "collection."

(b) Application. Any office, wherever located, making, negotiating, arranging, or collecting loans by mail must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third and collects past-due payments from another, all of these offices involved in lending by mail must be licensed. On the other hand, an office that merely receives, records, accounts for, processes payments need not be licensed.

(c) License not required. National banks and federally-chartered thrifts and credit unions, wherever located, and federally-insured state banks, state thrifts and state credit unions with offices located outside of Texas may make loans by mail to Texas without obtaining any license under §342.051 et seq., Texas Finance Code et seq. from the OCCC and are considered to be an authorized lender.

(d) Internet Loans. For purposes of §342.053(b), Texas Finance Code a loan made, negotiated, arranged or collected by or through the Internet is considered a "loan by mail."

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

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203950
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: August 4, 2002
For further information, please call: (512) 936-7610

SUBCHAPTER B. INTERPRETATIONS AND ADVISORY LETTERS

7 TAC §1.201

The Finance Commission of Texas (the commission) proposes new 7 TAC Subchapter B, §1.201, concerning interpretations and advisory letters. As part of an agency rule review, the commission is concurrently proposing the repeal of 7 TAC §1.911, concerning interpretations and advisory letters, in this issue of the *Texas Register*.

The proposed new subchapter relocates the proposed repealed rules in a more logical order providing easier access for the public.

Leslie L. Pettijohn, Consumer Credit Commissioner, 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 government as a result of administering or enforcing the new section.

Ms. Pettijohn also has determined that for each year of the first five-year period the new section will be in effect, the public benefit anticipated as a result of the new section is the logical relocation of rules for easier public use. There is no anticipated cost to persons who are required to comply with the new section as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed new section may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by an email to leslie.pettijohn@occc.state.tx.us.

The new section is proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed new section are Chapter 342, Texas Finance Code and the rest of Title 4.

§1.201. Interpretations and Advisory Letters.

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

(1) Advisory letter--A letter by the commissioner or a member of the staff of the Office of Consumer Credit Commissioner providing an informal advisory response to an inquiry concerning provisions of the Texas Finance Code, Title 4, Subtitles A or B and is not an interpretation as defined in paragraph (3) of this subsection.

(2) Commissioner--The commissioner of the Office of Consumer Credit Commissioner.

(3) Interpretation--A letter issued by the consumer credit commissioner and approved by the Finance Commission of Texas pursuant to Texas Civil Statutes, Texas Finance Code, §14.108 interpreting a provision of Title 4, Subtitle A or B in light of certain relevant facts by the requestor.

(b) Procedures for Finance Commission of Texas interpretations. Any person may submit a request for an interpretation. All requests must be directed to the commissioner and contain the following items:

(1) An explicit statement that an interpretation approved by the Finance Commission of Texas is desired.

(2) A concise description of the contemplated transaction or activity contemplated, the legal issue raised, and all facts necessary to reach a conclusion in the matter.

(3) A statement whether or not, to the best of the requestor's knowledge, the issue to be considered is an issue in pending litigation. Matters in litigation will not ordinarily be answered.

(4) A fee of $300 will be charged for an interpretation to compensate the agency for the expense involved in researching and answering the request. A payment of $300 should be submitted with the request. The commission may determine and remit a partial refund if deemed applicable. The commission may waive the fee.

(5) Additional information. A requestor should also identify each provision of law involved, and indicate the writer's opinion of how the legal issues should be resolved, and the basis for that opinion, including an analysis of any relevant court decisions, as well as, all prior interpretations to which the request relates.

(6) Processing time. Within ten business days of receipt of a valid request pursuant to this subsection, the request will be filed with the Texas Register for publication. Upon publication in the Texas Register, any party may within 30 calendar days submit briefs or proposals pertaining to the request. The agency will draft an interpretation or a response and present it to the Finance Commission of Texas for their consideration. Within ten business days of an action of the Finance Commission of Texas, a summary of the interpretation or the response will be filed with the Texas Register for publication. Copies of interpretations or responses shall contain a notation of approval and the date of action by the Finance Commission of Texas.

(c) Office of Consumer Credit Commissioner advisory letters. Each advisory letter shall contain the following notation: "THIS ADVISORY LETTER IS NOT AN INTERPRETATION APPROVED BY THE FINANCE COMMISSION OF TEXAS PURSUANT TO TEXAS FINANCE CODE, §14.108. If an interpretation approved by the Finance Commission of Texas is desired, then an interpretation should be requested pursuant to the procedures set forth in 7 Texas Administrative Code §1.201(b)."

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

Filed with the Office of the Secretary of State on June 24, 2002.

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Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: August 4, 2002

For further information, please call: (512) 936-7640

SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §§1.301 - 1.310

The Finance Commission of Texas (the commission) proposes new 7 TAC Subchapter C, §§1.301-1.310, concerning application procedures. As part of an agency rule review, the commission is concurrently proposing the repeal of 7 TAC §§1.30-1.40, concerning licensing procedures, in this issue of the *Texas Register*.

The proposed new subchapter relocates the proposed repealed rules in a more logical order providing easier access for the public.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the new sections.

Ms. Pettijohn also has determined that for each year of the first five-year period the new sections will be in effect, the public benefit anticipated as a result of the new sections is the logical relocation of rules for easier public use. These is no anticipated cost to persons who are required to comply with the new sections as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed new sections may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by an email to leslie.pettijohn@occc.state.tx.us.

The new sections are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed new sections are Chapter 342, Texas Finance Code and the rest of Title 4.

§1.301. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 342, have the same meanings as defined in Chapter 342. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Net assets--The total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets. Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption, and encumbered real or personal property to the extent of the encumbrance. Generally assets are available for use if they are readily convertible to cash within 10 business days.

(2) Principal party--All proprietors and adult individuals with a substantial relationship to the proposed lending business of the applicant. Individuals with a substantial relationship to the proposed lending business of the applicant include but are not limited to:

(A) general partners;

(B) voting members of a limited liability corporation;

(C) corporate officers, to include the Chief Executive Officer or President, the Chief Financial Officer or Treasurer, and those with substantial responsibility for lending operations or compliance with the Finance Code;

(D) directors of privately-held corporations;

(E) shareholders owning 10% or more of the outstanding voting stock; and

(F) trustees.

§1.302. Filing of New Application.

An application for issuance of a new consumer loan license must be submitted on forms prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The application shall include, but not be limited to, the following:

(1) Required Forms. All questions must be answered.

(A) Application form (Form ADM-10/11).

(i) A physical street address must be listed for the proposed address for the applicant's lending address. A post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or the application is for an inactive license, then the application must so state.

(ii) If the applicant is a corporation, then the officers and directors' sections on the back side of the form must be completed.

(iii) The section inquiring about owners requires an answer based upon the applicant's entity type. If an individual's interest in an entity is community property, then spouses with a community property interest must also be listed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming such status should be provided.

(I) Sole proprietorships. The individual(s) owning and operating the business must be named.

(II) General Partnerships. All partners must be listed and the percentage of ownership stated.

(III) Corporations. All shareholders holding voting stock must be named if the corporation is privately held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be attached that describes each level of ownership and management. This narrative or diagram requires the listing of the names of all officers, directors and stockholders owning 5% or more stock at each level.

(IV) Limited Liability Partnerships. All partners, general and limited, must be listed and the percentage of ownership stated. If a partner is a business entity and not an individual, a narrative or diagram must be attached that describes each level of ownership. This narrative or diagram requires the listing of the names of all officers, directors and stockholders owning 5% or more stock at each level.

(V) Limited Liability Companies. All managers, officers, agents and members, as those terms are used by the Texas Limited Liability Company Act, Texas Civil Statutes, Article 1528n, must be named. If a member is a business entity and not an individual, a narrative or diagram must be attached that describes each level of ownership. This narrative or diagram requires the listing of the names of all officers, directors and stockholders owning 5% or more stock at each level.

(VI) Trusts/Estates. List the trustee(s) or executor(s).

(iv) Manager. Each person who is responsible for the day-to-day operation of one or more of applicant's proposed offices must be named.

(v) Supervisor. Each person who will be responsible for the supervision of a licensed location must be named.

(vi) Signature(s). With sole proprietorships and partnerships, all proprietors and general partners must sign. With corporate applicants, two officers must sign unless only one officer of the corporation has been appointed. With limited liability companies, two authorized members must sign unless the company only has one member. With trusts or estates, the trustee or executor must sign.

(B) Statutory Agent Disclosure (Form ADM-13). This form must be completed by all applicants. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is an individual, the address must be a residential address. With corporations, the statutory agent listed on Form ADM-13 should be the registered agent listed in the articles of incorporation. With limited liability companies, the statutory agent listed on Form ADM-13 must be the registered agent listed in the articles of organization. If the statutory agent is not listed in the relevant organizational document, then the applicant must submit certified minutes appointing the new agent.

(C) Personal Affidavit (Form ADM-15/16). Every individual listed on the license application (ADM-10/11) as a principal party or as a supervisor or manager must complete this form. The percentage of ownership stated on this form must correspond to the individual's percentage listed on the license application Form ADM-10/11. The record of business associations must also include the individual's association with the entity applying for the license.

(D) Fingerprint Cards. A complete set of legible fingerprints shall be provided for each individual having a substantial relationship with the applicant. An individual has a substantial relationship with an applicant if it is a "principal party," as that term is defined in §1.301 of this title (relating to Definitions). Individuals who have previously been licensed by the commissioner and principal parties of entities currently licensed by the commissioner are not required to provide fingerprints. The commissioner may require fingerprints of employees or other persons with some relationship to the applicant if the commissioner believes that the individual's involvement in the lending operation is relevant to the applicant's eligibility for a license. All fingerprints should be submitted on the format provided by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation. A request for acceptable fingerprint cards may be made by submitting a completed Form ADM-030.097.

(E) Financial Statement (Form ADM-17/18/19).

(i) General Information. The financial statement must be dated no earlier than 60 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in order to expedite verification procedures. All financial statements must be certified as true, correct, and complete.

(ii) Sole Proprietorships. Sole proprietors must complete all sections of Form ADM-17 and the attached schedules, Form ADM-18/19, or provide a personal financial statement that contains all of the same information requested by Form ADM-17/18/19.

(iii) Partnerships. A financial statement for the partnership itself must be submitted. In addition, each general partner must submit a financial statement. All of the financial statements for the

partnership and the partners must be dated the same day. The information requested in Schedules 1-6 (ADM-18/19) must be submitted and attached to any balance sheet that is appended to the application.

(iv) Corporations and Limited Liability Companies. Corporations and limited liability companies must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in Schedules 1-6 (ADM-18/19) must be submitted and attached to any balance sheet that is appended to the application. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant.

(F) Assumed Name Certificates (Forms ADM-20 and ADM-21). For any applicant that does business under an assumed name as that term is defined in Texas Business & Commerce Code, §36.02(7), an assumed name certificate must be filed as provided in this subsection.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate (ADM-20 or its equivalent) with the county clerk of the county where the proposed business is located in compliance with Texas Business & Commerce Code, §36.0010, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate (ADM-21 or its equivalent) in compliance with Texas Business & Commerce Code, §36.0011, as amended. Evidence of the filing bearing the appropriate filing stamp must be submitted or, alternatively, a certified copy.

(2) Other Required Filings.

(A) Loan Forms. The applicant must provide information regarding all loan forms it intends to use.

(i) Custom Forms. If a custom loan form is to be prepared, a preliminary draft or proof that is complete as to format and content and which indicates the number and distribution of copies to be prepared for each transaction must be submitted.

(ii) Stock Forms. If applicant purchases or plans to purchase stock forms from a supplier, the applicant must attach a statement that includes the supplier's name and address and a list identifying the forms to be used, including the revision date of the form, if any.

(B) Statement of Experience. All new applicants should provide an attached statement setting forth the details of the applicant's prior experience in the lending or credit granting business. If the individuals named on the application do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant experience and why the commissioner should find that the applicant has the necessary experience.

(C) Statement of business operation plan. Applicants must attach a brief narrative to the application explaining the type of lending operation that is planned. This narrative should discuss each of the following topics: the source of customers, purpose(s) of loans, size of loans, the source of working capital for planned operations, whether the applicant will only be arranging or negotiating loans for another lender or financing entity and, if so, a list of those lenders, whether the loans will be collected at the location where the loans are made and, if not, identify the person or firm that will be handling servicing and state their location, and a detailed description of the process to be utilized in collections.

(D) Entity documents.

(i) Partnerships. Partnership applicants must submit a complete copy of the partnership agreement. This copy must be signed and dated by all partners. Limited partnerships must submit a copy of the articles of partnership filed with the secretary of state, any amendments, and a copy of the secretary of state's acknowledgment.

(ii) Corporations.

(I) All corporate applicants, domestic and foreign, must provide the following documents:

(-a-) A copy of the articles of incorporation and any amendments;

(-b-) A copy of the corporate bylaws;

(-c-) Minutes of corporate meetings that record:

(-1-) the election of all current officers and directors as listed on the license application (Form ADM-10/11); and

(-2-) the authorization for the application for the license; and

(-d-) A certificate of good standing from the comptroller of public accounts.

(II) All foreign corporate applicants must provide the following:

(-a-) A certificate of authority to do business in Texas.

(-b-) A statement of where corporate records and records of Texas loan transactions will be kept. If these records will be maintained at a location outside of Texas, the corporate applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual examination fees or agree to make all the records available for examination in Texas.

(III) Publicly held corporations must file the most recent 10K and 10Q for the applicant or for the parent company.

(iii) Trusts. A copy of the instrument that created the trust must be filed with the application.

(iv) Estates. A copy of the instrument establishing the estate must be filed with the application.

(E) Bond. The commissioner may require a bond under §342.102, Texas Finance Code, when the commissioner finds that this would serve the public interest. When a bond is required, the commissioner shall give written notice to the applicant. Should a bond not be submitted within 40 calendar days of the date of the commissioner's notice, any pending application may be denied.

(3) Subsequent Applications. If the applicant is currently licensed and filing an application for a new office, the applicant must provide the forms and other information that are unique to the new location including the application form (ADM 10/11) and a new financial statement as provided in paragraph (1)(E) of this section. Other information required by this section need not be filed if the information on file with the agency is current and valid.

§1.303. Transfer of License.

(a) Definition. As used in this section, a "transfer of ownership" occurs whenever an existing owner relinquishes that owner's entire interest in a licensee or an entirely new person has obtained an ownership interest in the licensee. This term includes any purchase or acquisition of control over more than 10% of the outstanding voting stock of any licensed corporation, or of any corporation which is the

parent or controlling stockholder of a licensed corporation. This term also includes any acquisition of a license by gift, devise or descent.

(b) Approval of transfer. No consumer loan license may be sold, transferred or assigned without written approval of the commissioner. When a person with no prior ownership interest in the licensee purchases or acquires control of 10% or more of the voting stock of any licensed corporation, or of any corporation that is the parent or controlling stockholder of a licensed corporation, an application for transfer of the ownership of the license must be filed.

(c) Filing requirements. An application for transfer of a consumer loan license must be submitted on forms prescribed by the commissioner at the date of filing and in accordance with the rules and the commissioner's instructions. The application for transfer shall include, but not be limited to, the following:

(1) Application form (Form ADM-10/11). The instructions in §1.302(1)(A) of this title (relating to Filing of New Application) are applicable to this filing.

(2) Statutory Agent Disclosure (Form ADM-13). The instructions in §1.302(1)(B) of this title are applicable to this filing.

(3) Personal Affidavit (Form ADM-15/16). Every individual listed on the license application (ADM-10/11) who is a principal party or is a supervisor or manager of the transferee must complete this form. The instructions set forth in §1.302(1)(C) of this title are applicable to this filing.

(4) Fingerprints. A complete set of legible fingerprints shall be provided for each individual having a substantial relationship with the applicant. An individual has a substantial relationship with an applicant if it is a "principal party," as that term is defined in §1.301 of this title (relating to Definitions). Individuals who have previously been licensed by the commissioner and principal parties of entities currently licensed by the commissioner are not required to provide fingerprints. The commissioner may require fingerprints of employees or other persons with some relationship to the applicant if the commissioner believes that the individual's background history is relevant to the applicant's eligibility for a license. All fingerprints should be submitted on a format provided by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation. A request for acceptable fingerprint cards may be made by submitting a completed Form ADM-030.097.

(5) Evidence of the transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application. This must include one of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the stock purchase agreement if 10% or more of the outstanding voting stock of a corporate licensee has been purchased or otherwise acquired; or

(C) any document that transferred ownership in a licensee by gift, devise or descent, such as a probated will or a court order.

(6) Financial statement (ADM-17/18/19). The instructions in §1.302(1)(E) of this title are applicable to this filing.

(7) Other Required Filings. All filings required of new license applicants pursuant to §1.302(2) of this title must be filed and completed by any applicant for transfer of a license. If the applicant is currently licensed and acquiring another location, the applicant must provide the forms and other information that are unique to the new location. Other information required by this subsection need not be filed if the information on file with the agency is current and valid.

(d) Permission to operate. No business under the license shall be conducted by any transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved by the commissioner. The commissioner may deny a request for permission to operate during the pendency of the application.

(e) Purchaser operating under seller's license. The commissioner may approve a written agreement whereby a seller grants a buyer the authority to operate under the seller's consumer loan license pending approval of the buyer's license application. The agreement must provide that the seller accepts full responsibility to the commissioner and any customer of the licensed business for any acts of the buyer in connection with the operation of the lending business. The written agreement between the seller and the buyer must be submitted with a request to operate under the seller's license not less than three business days after the date of the sale. The agreement shall be for a limited time as provided in the agreement and in no case may such authority extend beyond 180 days.

(f) Application filing deadline. Applications filed in connection with transfers of ownership may be filed in advance but must be filed no later than 10 calendar days following the actual transfer.

§1.304. Processing of Application.

(a) Initial review. The commissioner shall respond to applications within 15 working days of receipt stating that the application is complete and accepted for filing or stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when it:

(1) conforms to the rules and the commissioner's published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(c) Failure to complete application. If a complete application has not been filed with the commissioner within 30 days after notice of deficiency has been sent to the applicant, the application may be denied.

(d) Hearing. Whenever an application is denied, the affected applicant has 30 days from the date the application was denied to request in writing a hearing to contest the denial. This hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and §9.1 et seq. of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. Upon the final denial of an application, the annual fee shall be refunded to applicant. The investigation fee shall be forfeited.

(f) Processing time.

(1) The commissioner shall ordinarily approve or deny a license application within a maximum of 60 days after the date of filing of a completed application.

(2) When a hearing is requested following an initial license application denial, the hearing shall be held within 60 days after a request for a hearing is made unless the parties agree to an extension of time. The commissioner shall make a final decision approving or denying the license application after receipt of the proposal for decision from the administrative law judge.

(3) Exceptions. The commissioner may take more time where good cause exists, as defined by Government Code, §2005.004, for exceeding the established time periods in paragraphs (1) and (2) of this subsection.

§1.305. Change in Form or Proportionate Ownership.

(a) Organizational form. When any licensee desires to change the organizational form of its business (e.g., from sole proprietorship to corporation), the licensee must advise the commissioner in writing of the change within 10 calendar days by filing the appropriate transfer documents as provided in §1.303 of this title (relating to Transfer of License). In addition, the licensee shall submit a copy of the organizational document (such as the articles of incorporation) for the new entity.

(b) Merger. A merger of a corporate licensee is a change of ownership and requires the filing of a transfer application pursuant to §1.303 of this title. A merger of the parent corporation of a licensee with another corporation that leads to the creation of a new corporate entity requires a transfer application pursuant to §1.303 of this title. A merger of the parent corporation of a licensee with another corporation that results in the situation where the surviving corporation is not the existing parent corporation requires a transfer application pursuant to §1.303 of this title. Mergers of other corporations with a beneficial interest beyond the parent corporation level only require notification within 10 calendar days.

(c) Proportionate Ownership. A mere change in the proportion of ownership among the current owners does not require the filing of a transfer application. A change in the proportionate interests of two or more current owners of a consumer loan license must be reported in writing.

(d) Notice deadline. Notices filed in connection with changes in proportionate ownership may be filed in advance but must be filed no later than 10 calendar days following the actual change.

§1.306. Amendments to Pending Application.

Each applicant shall provide the commissioner with information supplemental to that contained in the applicant's original application documents and attachments. Any action, fact, or information that would require a materially different answer than that given in the original license application and which relates to the qualifications for license must be reported to the commissioner within 10 business days after the person has knowledge of the action, fact or information.

§1.307. Relocation of Licensed Offices.

(a) A licensee may move the licensed office from the licensed location to any other location by giving notice of intended relocation to the commissioner not less than 30 days prior to the anticipated moving date. The notice must include the present address of the licensed office, the contemplated new address of the licensed office, the approximate date of relocation, and a copy of the notice to debtors.

(b) Written notice of a relocation of an office must be mailed to all debtors of record at least five days prior to the date of relocation. Any licensee failing to give the required notice shall waive all default charges on payments coming due from the date of relocation to 15 days subsequent to the mailing of notices to debtors. Notices shall identify the licensee, give both old and new addresses, old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

§1.308. Designation of Active/Inactive Status.

(a) Inactivation of an active license. A licensee may cease operating under a consumer loan license and render the license inactive by giving notice of the cessation of operations to the commissioner not less than 30 days prior to the anticipated cessation date. Notification must be filed on the license amendment form (ADM-34). The notice must include the address of the licensed office, a certification that no loans will be made or collected under this license until it is reactivated, and the fee for amending the license.

(b) Activation of an inactive license. A licensee may activate an inactive consumer loan license by giving notice of the intended activation to the commissioner not less than 30 days prior to the anticipated activation date and remitting the fee for license amendment. Notification must be filed on the license amendment form (ADM-34) and must include the contemplated new address of the licensed office and the approximate date of activation.

§1.309. Fees.

(a) New licenses. A $200 investigation fee is assessed each time an application for a new license is filed and is non-refundable. In addition, the applicant is initially required to pay an annual license fee of $100 that is not prorated but is refundable if the license application is denied.

(b) License transfers. With applications for transfer of a license, the applicant must pay an investigation fee of $200 for the first license transfer and $50 on each additional license transfer sought simultaneously and is non-refundable.

(c) Fingerprint checks. The fee to investigate each applicant's fingerprint record is $40 per set and is non-refundable. This fee must be paid for each set of fingerprints filed with applications for new licenses or license transfers.

(d) License amendment. A fee of $25 must be paid each time a licensee seeks to amend a license by rendering a license inactive, activating an inactive license, changing the assumed name of the licensee, or relocating an office.

(e) License duplicate. The fee for a license duplicate is $10.

(f) Costs of hearings. The commissioner may assess the costs of an administrative appeal hearing afforded under §1.304(d) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter and agency staff representing the agency at a hearing.

§1.310. Applications and Notices as Public Records.

Once a license application or notice is filed with the OCCC, it becomes a "state record" under Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Government Code, §441.187. Under Government Code, §441.191, the OCCC may not return any original documents associated with a consumer loan license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Government Code, Chapter 552.

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

Filed with the Office of the Secretary of State on June 24, 2002.

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Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: August 4, 2002
For further information, please call: (512) 936-7640

SUBCHAPTER D. LICENSE

7 TAC §1.405

The Finance Commission of Texas (the commission) proposes an amendment to 7 TAC §1.405, concerning application process after suspension or revocation.

The purpose of the amendment is to make technical changes to the rules in order to conform with the numbering of proposed new subchapters in connection with an agency rule review.

Consumer Credit Commissioner, Leslie L. Pettijohn, has determined that, for each year of the first five years that the amendment is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the amendment.

Commissioner Pettijohn also has determined that, for each of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of the proposal of the amendment will be proper cite reference in the rule to correspond with the concurrently proposed new subchapter.

Comments concerning the proposed amendment should be submitted within 30 days of publication to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705, or by an email to leslie.pettijohn@occc.state.tx.us.

The amendment is proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed new amendment are Chapter 342, Texas Finance Code and the rest of Title 4.

§1.405. Application Process after Suspension or Revocation .

To obtain a license after a license has been suspended or revoked, the former licensee is required to file an application for a new license pursuant to the procedures set forth in §1.303 [~~1.31~~] of this title (relating to Transfer of License).

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

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203951
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: August 4, 2002
For further information, please call: (512) 936-7640

SUBCHAPTER P. REGISTRATION OF RETAIL CREDITORS

7 TAC §1.911

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

The Finance Commission of Texas (the commission) proposes the repeal of 7 TAC §1.911, concerning interpretations and advisory letters. As part of an agency rule review the commission is concurrently proposing new subchapters to relocate these rules in a more logical order, in this issue of the *Texas Register*.

This repeal is necessary because the sections have been rewritten and incorporated into new subchapters.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period of the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Ms. Pettijohn also has determined that for each year of the first five-year period the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal is the logical relocation of these rules. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed repeal may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by an e-mail to leslie.pettijohn@occc.state.tx.us.

The repeal is proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are Chapter 342, Texas Finance Code and the rest of Title 4.

§1.911. Interpretations and Advisory Letters

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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Leslie L. Pettijohn
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CHAPTER 4. CURRENCY EXCHANGE

7 TAC §4.11

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

The Finance Commission of Texas (the commission) proposes the repeal of §4.11, concerning fees. Section 4.11 implements Finance Code, §153.303, which authorizes the commission to set currency exchange, transportation, and transmission license application fees, license renewal fees, and examination fees in amounts that are reasonable and necessary to defray the cost of administering Finance Code, Chapter 153.

Concurrently with this repeal, the commission is proposing the adoption of new §4.11. The proposed repeal and adoption will convert the rule to a plain language format and change the existing examination fee structure. The new examination fee structure is necessary under Finance Code, §153.303 because existing §4.11 does not generate fees in amounts sufficient for the department to administer Finance Code, Chapter 153.

Ms. Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that, for each year of the first five years that the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Newberg also has determined that, for each of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal and adoption of proposed §4.11 is more clear regulation for currency exchange, transportation, and transmission license holders and generation of revenues necessary to implement Finance Code, Chapter 153 so that currency exchange, transportation, and transmission consumers are protected. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

Comments concerning the proposed repeal should be submitted within 30 days of publication to Robin Robinson, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by email to robin.robinson@banking.state.tx.us.

The repeal is proposed under Finance Code, §153.002, which authorizes the commission to adopt rules necessary or desirable to implement Finance Code, Chapter 153, and Finance Code §153.303, which authorizes the commission to set fees in amounts that are reasonable and necessary to defray the cost of administering Finance Code, Chapter 153.

Finance Code, Chapter 153 is affected by the proposed repeal.

§4.11. 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.

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203891

Everette D. Jobe
Certifying Official
Finance Commission of Texas
Proposed date of adoption: August 16, 2002
For further information, please call: (512) 475-1300

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7 TAC §4.11

The Texas Finance Commission (the commission) proposes new §4.11, concerning fees. Proposed §4.11 will implement Finance Code, §153.303, which authorizes the commission to set currency exchange, transportation, and transmission license application fees, license renewal fees, and examination fees in amounts that are reasonable and necessary to defray the cost of administering Finance Code, Chapter 153. Existing §4.11 is proposed for repeal in this issue of the *Texas Register*.

Proposed §4.11 will change the department's method of calculating and collecting currency exchange, transportation, and transmission examination fees. Under existing §4.11, examination fees are $400 per examiner per day plus associated travel costs. Under proposed §4.11, the $400 rate will be replaced by an annual examination fee assessed on the total amount of the currency exchange, transportation, and transmission transactions conducted by a license holder. The assessed amount will include the cost of one annual examination plus the associated travel expenses for that examination. If an additional examination is required during a one year period because of a license holder's failure to comply with Finance Code, Chapter 153, commission rules, or department requests, proposed §4.11 will require a license holder to pay for the additional examination at the rate of $600 per day for each examiner plus any associated travel expenses. This per day rate also applies to new license holders who have not accumulated the data necessary to calculate their first annual examination fee. If out-of-state travel is necessary to conduct an examination, proposed §4.11 requires a license holder to pay the travel expenses.

Proposed §4.11 also provides a means for a license holder to request a reduction in the annual examination fee if payment of the fee will cause the business to be unable to pay debts as they mature or pay obligations as they become due and payable. The remaining provisions in proposed §4.11 provide for the same licensing and renewal fees and deadlines for payment of fees as the existing §4.11 proposed for repeal.

The fee rate increase is established by the department and approved by the commission, and not mandated by the Legislature. It is proposed to comply with Finance Code, §153.303, which requires the department to collect fees from license holders in amounts necessary to administer Finance Code, Chapter 153. The department has determined that the new fee structure will generate fees in amounts sufficient to administer Finance Code, Chapter 153. The new fee structure is necessary because the existing fee structure does not generate enough revenue to cover the costs of department examinations or other aspects of the Finance Code, Chapter 153 program. As a result, the department has had to use other unrelated revenue sources to administer Finance Code, Chapter 153 for the past two fiscal years.

Several factors have led to the necessity of the new fee structure. The primary one is the disappearance of federal grant funds. The department has historically received federal funds to administer

its Finance Code, Chapter 153 program. These funds have decreased substantially over the last ten years from a yearly average of $208,128 between 1992 and 1999, to $85,792 in 2000 and $58,005 in 2001. In addition, despite inflation and rising program costs, there has been no fee increase on license holders since 1993. The increase in proposed §4.11 will be the first one on license holders in nearly ten years.

To minimize the impact of the fee increase, the department will lower bonding requirements of license holders that receive satisfactory examination ratings. For license holders engaged exclusively in currency exchange, the required bond of $25,000 will be reduced to $3,500. The average yearly savings for currency exchangers from this reduction is expected to be $400. For currency transmission and transportation license holders, the current minimum bond amount of $300,000 will be reduced to $200,000. The average yearly savings for currency transmitters and transporters from this reduction is expected to be $1,500.

The reduced bonding requirements will not affect the level of protection afforded to consumers doing business with license holders. The risk of customer claims on currency exchange bonds is minimal because currency exchange businesses do not hold customer funds. Further, the department has determined that the $200,000 bonding requirement for transmitters and transporters is more than sufficient to address the risk associated with customer bond claims. Since the inception of the currency exchange and transmission program in 1991, there has been only one bond claim on behalf of transmission customers and the bond amount in that case was substantially higher than the losses.

The department is currently developing standards for bond reductions that will be added to §4.7. Until §4.7 is amended, a license holder may apply for a reduction in bonding requirements under Finance Code, §153.109(f).

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that, for each year of the first five years that the section as proposed is in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the section. The total amount of revenues collected by the department will remain approximately the same. Only the sources of revenue to administer Finance Code, Chapter 153 will change under the new rule.

Ms. Newberg also has determined that, for each of the first five years the section as proposed will be in effect, the anticipated public benefit will be more clear regulatory requirements and increased efficiency in the administration of Finance Code, Chapter 153 provisions. For each of the first five years the section as proposed will be in effect, the economic costs to persons required to comply with the rule will be increased examination fees. The average yearly increase to license holders will be approximately $1,249.93.

Of the 85 currency exchange, transportation, and transmission license holders, 71 are micro-businesses and 14 are small businesses under the definitions of those terms in Government Code, §2006.001. The average examination fee increase on the micro-businesses under the proposed fee structure will be approximately $1,263.14, or $ .02 per $100 in sales. The average examination fee increase on the small businesses will be approximately $1,140.44, or $ .02 per $100 in sales. Because all license holders are small or micro-businesses, this proposal will not result in a disproportionate effect on small and micro-businesses as compared to larger businesses.

Comments on the proposed rule may be submitted to Robin Robinson, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by email to robin.robinson@banking.state.tx.us.

The new section is proposed under Finance Code, §153.002, which authorizes the commission to adopt rules necessary or desirable to implement Finance Code, Chapter 153, and Finance Code, §153.303, which authorizes the commission to set fees in amounts that are reasonable and necessary to defray the cost of administering Finance Code, Chapter 153.

Finance Code, Chapter 153 is affected by the proposed amendment.

§4.11. What fees must I pay to get and maintain a currency exchange, transportation, or transmission license?

(a) Definitions.

(1) Examination-the process of evaluating the books and records of a license holder relating to its currency exchange, transmission, and transportation activities.

(2) Financially insolvent-the inability to pay debts as they mature or pay obligations as they become due and payable.

(b) What fees must I pay to the department for obtaining and renewing a currency exchange, transportation, or transmission license?

(1) You must pay a $1,500 fee to obtain a license for your first location and $500 for each additional location.

(2) You must pay a $500 annual renewal fee for your first location and $100 for each additional location.

(c) What fees must I pay for a department examination?

(1) You must pay an annual examination fee that is based on your total annual dollar amount of currency exchange, transportation, and transmission transactions, determined by adding the quarterly amounts listed in your last four consecutive quarterly reports filed prior to July 1st of each year under §4.3(d) of this chapter.

(A) Your fee will be $1,500 if the annual amount of your transactions is $500,000 or less.

(B) If the annual amount of your transactions is greater than $500,000 and less than $1 million, your fee will be the sum of:

(i) $1,500, and

(ii) the amount of your transactions over $500,000 multiplied by a factor of .002.

(C) If the annual amount of your transactions is equal to or greater than $1 million and less than $15 million, your fee will be the sum of:

(i) $2,500, and

(ii) the amount of your transactions over $1 million multiplied by a factor of .00007.

(D) If the annual amount of your transactions is equal to or greater than $15 million, your fee will be the sum of:

(i) $3,480, and

(ii) the amount of your transactions over $15 million multiplied by a factor of .00003.

(2) If the annual examination fee that you calculated under paragraph (1) of this subsection was over $8,000, your examination fee will be $8,000.

(3) If an additional examination is necessary within a one-year period because you failed to comply with Finance Code, Chapter 153, this chapter, or a department request made in the discharge of its regulatory duties under Finance Code, Chapter 153 or this chapter, as determined by the department, you must pay for the additional examination at a rate of $600 per day for each examiner required to conduct the additional examination and any associated travel expenses.

(4) If you are a new license holder and have not yet filed four quarterly reports by September 1st of your first year in business, your first examination fee will be $600 per day for each examiner that conducts your examination and any associated travel expenses. Your subsequent annual examination fee will be calculated in accordance with paragraph (1) of this subsection.

(5) If an out-of-state examination is necessary, you must pay the associated travel expenses in addition to the annual examination fee.

(d) How will the department bill me for the examination fee? The department may assess the examination fee in quarterly or fewer installments in such periodically adjusted amounts as reasonably appear necessary to pay for the costs of examination and to administer Finance Code, Chapter 153. The commissioner may decrease examination fees if it is determined that a lesser amount than would otherwise be collected is necessary to administer Finance Code, Chapter 153.

(e) What if I cannot afford the annual examination fee? If you show that payment of the annual examination fee will cause your business to become financially insolvent, the commissioner may reduce the fee. You must request a reduction by filing an application no later than 15 days after the due date of the fee with supporting financial records showing your impending insolvency.

(f) When do I need to pay the fees required by this section?

(1) You must pay the license and license renewal fees required by subsection (b) of this section at the time you file your application for a license or application for renewal.

(2) You must pay your annual examination fee required by subsection (c) of this section no later than the 15th day after the date of the department's billing.

(3) You must pay additional examination fees and associated travel costs required by subsection (c) of this section at the time of billing.

(g) Are any of the fees I pay under this section refundable? No, the department may not refund any amounts you pay in 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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Everette D. Jobe
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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 11. MISCELLANEOUS
SUBCHAPTER B. SAME POWERS AS NATIONAL BANKS

7 TAC §11.81, §11.83

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

The Finance Commission of Texas (the commission) proposes the repeal of §11.81, concerning loans, and §11.83, concerning other matters.

Sections 11.81 and 11.83 were adopted in 1982 to help state banks remain competitive, by authorizing certain powers and activities for state banks that were already authorized for national banks. These rules predate the 1984 constitutional amendment to Texas Constitution, Article XVI, §16, granting state banks "the same rights and privileges that are or may be granted to national banks of the United States domiciled in this State." In addition, relevant state banking law was thoroughly and comprehensively rewritten and modernized by legislation enacted in 1995, 1999, and 2001. The need for existing §11.81 and §11.83 therefore no longer exists and repeal is appropriate. A bank will not lose any of the powers listed in §11.81 and §11.83 as a result of the repeal. The right to exercise these powers is adequately protected by Texas Constitution, Article XVI, §16(c), and by current statutes and regulations, including Finance Code, §32.009. Exercise of certain powers is further addressed in department opinions and policies.

Mr. Gayle Griffin, Deputy Commissioner, Texas Department of Banking, has determined that, for each year of the first five years that the repealed sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Griffin also has determined that, for each of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal is the removal of outdated regulations. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

Comments concerning the proposed repeal should be submitted within 30 days of publication to Robin Robinson, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by email to robin.robinson@banking.state.tx.us.

The repeal is proposed under Finance Code, §31.003, which authorizes the commission to adopt rules necessary to accomplish the purposes of Finance Code, Title 3, Subtitle A.

Finance Code, Title 3, Subtitle A is affected by the proposed repeal.

§11.81. Loans.

§11.83. Other Matters.

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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Texas Department of Banking
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For further information, please call: (512) 475-1300

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CHAPTER 21. TRUST COMPANY CORPORATE ACTIVITIES

The Texas Finance Commission (commission) proposes new §21.9, concerning waiver of requirements relating to trust company corporate activities. The commission also proposes to amend §§21.1 - 21.6 and 21.8, concerning fees for corporate applications and other provisions of general applicability to trust companies; §21.23 and §21.24, concerning trust company chartering and powers; §21.31 and §21.32, concerning trust deposits; §21.41 and §21.42, concerning trust company offices; §21.51, concerning change of control of a trust company; §§21.61, 21.62, 21.64, 21.67, 21.68, 21.72, and 21.76, concerning application for merger, conversion, or sale of assets of a trust company; and §21.91 and §21.92, concerning charter amendments and certain changes in outstanding stock of a trust company.

Proposed new §21.9 will authorize the banking commissioner to waive or modify any application requirement imposed by Chapter 21, regarding trust company corporate activities. Existing §21.71 authorizes waiver or modification of requirements in Chapter 21, Subchapter F, and proposed §21.9 will extend that authority to the rest of Chapter 21. The commission is concurrently proposing the repeal of §21.71 in this issue of the *Texas Register*.

Most of the proposed amendments merely correct citations that changed as a result of the 1999 codification of the Texas Trust Company Act (Texas Civil Statutes, Articles 342a-1.001 et seq), into the Finance Code.

The remaining proposed amendments concern application fees for trust companies. The commission proposes to amend §21.2(b)(13) to increase the fee for an application to amend articles of association from $200 to $300. The $100 increase is necessary to more fully recover the cost of processing this type of application and will make the department fee consistent with the $300 fee charged by the Secretary of State for the same type of application.

In addition, the commission proposes to add two new fees to §21.2 and allow recovery of investigative fees and costs on a new type of application. Finance Code, §182.502, added to the Finance Code in 2001, permits a trust institution to convert to a state trust company with the approval of the banking commissioner. Proposed §21.2(b)(22) will impose a $5,000 fee for an application under new Finance Code, §182.502. In this connection, §21.2(d) is proposed to be amended to add this application to the list of applications that are subject to additional charges for recovery of investigative fees and costs. Finally, proposed §21.2(b)(23) will impose a new $300 fee for an application to exempt an acquisition of control transaction from the requirements of Finance Code, §183.001, as provided by Finance Code, §183.001(d)(4). This fee is considered necessary to recover the costs of processing this type of application.

Gayle Griffin, Deputy Commissioner, Texas Department of Banking, has determined that, for each year of the first five years that these sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as amended or adopted.

Mr. Griffin also has determined that, for each of the first five years these sections as amended or adopted are in effect, the public benefit anticipated as a result of the amendments or adoption will be the replacement of obsolete statutory references with correct citations and clear guidance on corporate applications. The anticipated costs to persons who are required to comply with these sections as proposed are (1) $5,000 for each application to convert a trust institution to a state trust company under Finance Code, §182.502, (2) $5,000 in investigative fees and costs associated with conversion of a trust institution into a state trust company under Finance Code, §182.502, (3) $300 for each application to exempt an acquisition of control transaction under Finance Code, §183.001(d)(4), and (4) an increase of $100 for each application to amend articles of association under Finance Code, §182.101. The fee increase and proposed new fees were established by the department, and not mandated by the Legislature. There will be no adverse effect on small businesses as a result of the proposed amendments or adoption of these sections.

Comments on the proposal may be submitted to Robin Robinson, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to robin.robinson@banking.state.tx.us.

SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

7 TAC §§21.1 - 21.6, 21.8

The amendments are proposed under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

Finance Code, Title 3, Subtitle F, is affected by the proposal.

§21.1. Definitions.

Words and terms used in this chapter that are defined in the Trust Company Act [~~Texas Civil Statutes, Articles 342a-1.001 et seq~~], have the same meanings as defined therein. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accepted filing--An application, request, notice, or protest filed under the Trust Company Act [~~Texas Civil Statutes, Articles 342a-1.001 et seq~~], this chapter, or another rule adopted pursuant to the Trust Company Act [~~Texas Civil Statutes, Articles 342a-1.001 et seq~~], for which the appropriate fee has been paid pursuant to §21.2 of this title (relating to Filing and Investigative Fees), and regarding which the banking commissioner has notified the person or entity who submitted the filing, in writing, that the submission is complete and has been accepted for filing.

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

(7) Public notice--A matter, including an application, request, notice, or protest, whether by proclamation or declaration, required or authorized to be published in a newspaper of general circulation by the Trust Company Act [~~Texas Civil Statutes, Articles 342a-1.001 et seq~~], this chapter, or another rule adopted pursuant to the Trust Company Act [~~Texas Civil Statutes, Articles 342a-1.001 et seq~~], or required to be published by the banking commissioner.

(8) Submitted filing--An initial application, request, notice, or protest filed under the Trust Company Act [~~Texas Civil~~

Statutes, Articles 342a-1.001 et seq], this chapter, or another rule adopted pursuant to the Trust Company Act [Texas Civil Statutes, Articles 342a-1.001 et seq], that has not been abandoned and is not an accepted filing.

(9) Trust Company Act--Finance Code, Title 3, Subtitle F (§§181.001 et seq).

§21.2. Filing and Investigation Fees.

(a) (No change.)

(b) Filing fees. Simultaneously with a submitted application or notice, an applicant shall pay to the department:

(1) $5,000 for an application for trust company charter pursuant to Finance Code, §182.003 [Texas Civil Statutes, Article 342a-3.003];

(2) $5,000 for an application for conversion of exempt trust company to non-exempt pursuant to Finance Code, §182.011(d) [Texas Civil Statutes, Article 342a-3.011(d)];

(3) $4,000 for an application to authorize a merger or share exchange pursuant to Finance Code, §182.302 [Texas Civil Statutes, Article 342a-3.302], and §21.64 of this title (relating to Application for Merger or Share Exchange), or $2,500 for an expedited application if permissible pursuant to §21.63 of this title (relating to Expedited Filings);

(4) (No change.)

(5) $4,000 for an application to authorize a purchase of assets pursuant to Finance Code, §182.401 [Texas Civil Statutes, Article 342a-3.401];

(6) $1,000 for an application to authorize the sale of substantially all assets pursuant to Finance Code, §182.405 [Texas Civil Statutes, Article 342a-3.405];

(7) $500 for a subsidiary notice letter pursuant to Finance Code, §184.103(c) [the Texas Civil Statutes, Article 342a-5.103(c)], plus an amount up to an additional $3,500 if the banking commissioner notifies the applicant that additional information and analysis is required;

(8) $5,000 for an application regarding acquisition of control pursuant to Finance Code, §183.002 [Texas Civil Statutes, Article 342a-4.002], or $2,500 for an expedited application if the applicant has previously been approved to control another trust company and no material changes in the applicant's circumstances have occurred since the prior approval;

(9) $200 for a notice to change home office with no abandonment of existing office pursuant to Finance Code, §182.202(c) [Texas Civil Statutes, Article 342a-3.202(c)], and §21.41(a) of this title (relating to Written Notice and Application for Change of Home Office);

(10) $1,500 for an application to relocate the home office with abandonment of existing office pursuant to Finance Code, §182.202(d) [Texas Civil Statutes, Article 342a-3.202(d)], and §21.41(b) of this title, except as otherwise provided in paragraph (11) of this subsection;

(11) (No change.)

(12) $200 for a notice of additional office pursuant to Finance Code, §182.203(a) [Texas Civil Statutes, Article 342a-3.203(a)], and §21.42 of this title (relating to Establishment, Relocation and Closing of an Additional Office), plus an additional $1,300 if the banking commissioner notifies the applicant pursuant to Finance Code, §182.203(b) [Texas Civil Statutes, Article 342a-3.203(b)], and §21.42(c) of this title that additional information and analysis is required;

(13) $300 [$200] for an application to amend a trust company charter (articles of association) pursuant to Finance Code, §182.101 [Texas Civil Statutes, Article 342a-3.101];

(14) (No change.)

(15) $100 for a request for a "no objection" letter to use a name containing a term listed in Finance Code, §181.004 [Texas Civil Statutes, Article 342a-6.202], by an entity other than a depository institution or a trust company;

(16) $500 for an application to authorize acquisition of treasury stock pursuant to Finance Code, §184.102 [Texas Civil Statutes, Article 342a-5.102], and §21.91 of this title (relating to Acquisition and Retention of Shares as Treasury Stock);

(17) $500 for an application to authorize an increase or reduction in capital and surplus pursuant to Finance Code, §182.103 [Texas Civil Statutes, Article 342a-3.103];

(18) $1,000 for an application for trust company exemption pursuant to Finance Code, §182.012 [Texas Civil Statutes, Article 342a-3.012], and §21.24 of this title (relating to Exemptions for Trust Companies Administering Family Trusts);

(19) $1,000 for an application for authority to accept deposits pursuant to Finance Code, §§182.101, 184.301, and 184.302 [Texas Civil Statutes, Article 342a-3.101 and Article 342a-5.401], and §21.31 of this title (relating to Notice To Engage in Trust Deposits);

(20) $100 for the annual certification filing for an exempt trust company pursuant to Finance Code, §182.013 [Texas Civil Statutes, Article 342a-3.013]; [and]

(21) $100 for required filing of a statement of condition and income pursuant to Finance Code, §181.107; [Texas Civil Statutes, Article 342a-2.003.]

(22) $5,000 for an application to convert from a trust institution to a state trust company pursuant to Finance Code, §182.502; and

(23) $300 for an application to exempt an acquisition of control transaction from the requirements of Finance Code, §183.001 pursuant to Finance Code, §183.001(d)(4), which fee shall be applied to a subsequent application for approval of an acquisition of control if the exemption is denied.

(c) (No change.)

(d) Investigative fees and costs. An applicant for a trust company charter, [or] conversion from an exempt trust company to a non-exempt trust company or limited trust association, or conversion of a trust institution to a state trust company shall pay an investigation fee of $5,000 once the application has been accepted for filing. If required by the banking commissioner, an applicant under another type of application or filing listed in subsection (b) of this section shall pay the reasonable investigative costs of the department incurred in any investigation, review, or examination considered appropriate by the department, calculated as provided by §17.22(a) of this title (relating to Examination and Investigation Fees). Such investigation fee or costs must be paid by the applicant upon written request of the department. Failure to timely pay the investigation fee or a bill for investigative costs constitutes grounds for denial of the submitted or accepted filing.

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

§21.3. Expedited Filings.

(a) Eligible trust companies may file an expedited filing according to forms and instructions provided by the department solely for home office relocations within the same city pursuant to Finance Code, §182.202(d) [~~Texas Civil Statutes, Article 342a-3.202(d)~~], and §21.41(b) of this title (relating to Written Notice and Application for Change of Home Office), together with the fee required by §21.2 of this title (relating to Filing and Investigation Fees). Notice must be published as required by §21.41(e) of this title.

(b) Notwithstanding another provision of this section, the banking commissioner may deny expedited filing treatment to an eligible trust company, in the exercise of discretion, if the banking commissioner finds that the filing involves one or more of the following:

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

(3) the proposed transaction will result in a fixed asset investment in excess of the limitation contained in Finance Code, §184.002(a) [~~Texas Civil Statutes, Article 342a-5.001(b)~~];

(4) - (7) (No change.)

(c) - (e) (No change.)

§21.4. Required Information and Abandoned Filings.

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

(c) Time limit for providing required information. Unless otherwise provided for in the Trust Company Act [~~Texas Civil Statutes, Articles 3421-1.001 et seq (the Trust Company Act)~~], this chapter or rules and regulations adopted pursuant to the Trust Company Act, all required information necessary for the banking commissioner to declare that a submission is an accepted filing shall be provided to the department on or before the 61st day after the date of the initial submission of the filing. A person or entity may request an automatic 30-day extension of time to submit required information if the request is in writing and is received by the department prior to the end of the initial 60-day period provided for in this subsection. An additional extension may be requested in writing if such request is received prior to the expiration of the automatic extension. The additional extension shall be granted only if there is a finding of good and sufficient cause, in the banking commissioner's discretion, to grant an extension. Notice of the decision of the banking commissioner shall be mailed to the person or entity seeking the extension within ten days of the receipt of the request by the department.

(d) - (e) (No change.)

§21.5. Public Notice.

(a) (No change.)

(b) Contents. The public notice must state that a filing is being made; the date (or expected date) of the filing; sufficient information describing the proposed transaction, and other related information required by the Trust Company Act [~~Texas Civil Statutes, Articles 342a-1.001 et seq (the Trust Company Act)~~], this chapter or rules and regulations adopted pursuant to the Trust Company Act, and any other information as may be required by the banking commissioner. In addition, the notice must include substantially the following text as a separately stated paragraph: "Any person wishing to comment on this application, either for or against, may file written comments with the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294 on or before the 14th day after the date of this publication. Such comments will be made a part of the record before and considered by the banking commissioner. Any person wishing to formally protest and oppose (describe type of application in general terms) and participate in the application process may do so by filing a written notice of protest with the Texas Department of Banking on or before the 14th calendar day after the date of this publication accompanied by a protest filing fee of $2,500. The protest fee may be reduced or waived by the banking commissioner upon a showing of substantial hardship."

(c) - (e) (No change.)

§21.6. Applications for Trust Charter: Notices to Applicants; Application Processing Times; Appeals.

(a) Form of application. An application to engage in a business under Finance Code, §182.003 [~~Texas Civil Statutes, Article 342a-3.003~~], must be filed on a form prescribed by the banking commissioner.

(b) - (e) (No change.)

§21.8. Corporate Filings.

(a) In accordance with the applicable provisions of the Trust Company Act [~~Texas Civil Statutes, Articles 342a-1.001 et seq (the Trust Company Act)~~], the following corporate forms regarding a trust company, along with the applicable filing fees, must be filed with the banking commissioner:

(1) (No change.)

(2) articles of amendment under Finance Code, §182.101 [~~Texas Civil Statutes, Article 342a-3.101~~];

(3) restated articles of association under the Finance Code, §182.101 [~~Texas Civil Statutes, Article 342a-3.101~~];

(4) restated articles of association with amendments under Finance Code, §182.101 [~~Texas Civil Statutes, Article 342a-3.101~~];

(5) articles of merger under Finance Code, §§182.301 et seq [~~Texas Civil Statutes, Articles 342a-3.301 et seq~~], as supplemented by the Texas Business Corporation Act (TBCA), Article 5.04;

(6) - (7) (No change.)

(8) establishment of a series of shares by the board of directors under Finance Code, §182.101 [~~Texas Civil Statutes, Article 342a-3.101~~];

(9) - (13) (No change.)

(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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Everette D. Jobe
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7 TAC §21.9

The new section is proposed under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

Finance Code, Title 3, Subtitle F, is affected by the proposal.

§21.9. Waiver of Requirements.

The banking commissioner in the exercise of discretion may waive or modify any requirement imposed by this chapter.

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 B. TRUST COMPANY CHARTERING AND POWERS

7 TAC §21.23, §21.24

The amendments are proposed under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

Finance Code, Title 3, Subtitle F, is affected by the proposal.

§21.23. Option To Withhold Identity of Officers.

An applicant for a trust company charter may, at its option, withhold the identity of prospective officers until such time as the banking commissioner issues a final order on the application. Approval of the application will be conditional upon the applicant's submitting resumes of qualified proposed officers to the banking commissioner. Upon receipt of the resumes, the banking commissioner shall review and investigate the qualification of the proposed officers and deliver the certificate of authority pursuant to Finance Code, §182.006 [~~Texas Civil Statutes, Article 342a-3.006~~], if the banking commissioner finds that the proposed officers meet the requirements of Finance Code, §182.003(b)(3) [~~Texas Civil Statutes, Article 342a-3.003(b)(4)~~].

§21.24. Exemptions for Trust Companies Administering Family Trusts.

(a) Compliance required. Pursuant to Finance Code, §182.011 and §182.012 [~~Texas Civil Statutes, Article 342a-3.011 and Article 342a-3.012~~], a trust company, which does not transact business with the public, may request in writing that it be exempted from specified provisions of the Trust Company Act [~~Texas Civil Statutes, Article 342a-1.001 et seq~~]. The banking commissioner may grant the request in whole or in part if the trust company does not transact business with the public. A trust company does not transact business with the public if it acts as a corporate fiduciary for accounts in which all beneficiaries are related within the fourth degree of affinity or consanguinity to the person who controls the trust company. A trust company administering family trusts which request exemption from specified provisions of the Trust Company Act [~~Texas Civil Statutes, Article 342a-1.001 et seq~~], must comply with this section.

(b) Application for Exemption. A trust company administering family trusts which seeks exemption from specified provisions of the Trust Company Act [~~Texas Civil Statutes, Article 342a-1.001 et seq~~], shall file an application, together with the appropriate filing fee required by §21.2 of this title (relating to Filing and Investigation Fees), with the banking commissioner. The application must specify the specific exemptions requested and the reasons or justification for requesting the exemptions. The application must also include a copy of the trust company's articles of association which must contain the following statement in its purposes clause: "The sole purpose for which the trust company is organized is to act as a corporate fiduciary for accounts in which all beneficiaries are related within the fourth degree of affinity or consanguinity to _______________ (name of person who controls the trust company)."

(c) Exemption. Subject to conditions or limitations being imposed by the banking commissioner, a trust company administering family trusts may request exemption from the following provisions of the Trust Company Act [~~Texas Civil Statutes, Article 342a-1.001, et seq~~]:

(1) the requirement of Finance Code, §181.107(c), [~~Texas Civil Statutes, Article 342a-2.003(d)~~] providing that the report of assets portion of a statement of condition and income is a public record.

(2) the requirement of Finance Code, §183.103(a) [~~Texas Civil Statutes, Article 342a-3.002(11)~~], that five is the minimum number of directors, managers, or managing participants that can be specified in the articles of association, provided that the articles of association must specify the number of directors, managers, or managing participants, consistent with paragraph (3) of this subsection;

(3) the requirement of Finance Code, §183.103(a) [~~Texas Civil Statutes, Article 342a-4.103(a)~~], that the number of directors, managers, or managing participants of a trust company cannot be less than five or more than 25, the majority of whom must be residents of this state, provided that the board of a trust company seeking exemption under this section must consist of not fewer than three or more than 25 directors, managers, or managing participants, at least one of whom must be a resident of this state;

(4) the restrictions of Finance Code, §183.109(a)-(c) [~~Texas Civil Statutes, Article 342a-4.107(a) - (c)~~], regarding transactions with management and affiliates;

(5) the limitations of Finance Code, §184.002 [~~Texas Civil Statutes, Article 342a-5.001~~], on investment in trust company facilities;

(6) the limitations of Finance Code, §184.101 [~~Texas Civil Statutes, Article 342a-5.101~~], on securities investments, provided that the exemption request must address each limitation and the reasons for exemption separately;

(7) the restrictions of Finance Code, §184.102 [~~Texas Civil Statutes, Article 342a-5.102~~], regarding transactions in state trust company shares or participation shares;

(8) the limitations of Finance Code, §184.003 [~~Texas Civil Statutes, Article 342a-5.104~~], on other real estate investments; and

(9) the limitations of Finance Code, §§184.201 - 184.203 [~~Texas Civil Statutes, Article 342a-5.201 and Article 342a-5.202~~], regarding lending limit and lease financing transaction restrictions, provided that no loans may be made from a trust company's minimum restricted capital amount.

(d) - (e) (No change.)

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

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Texas Department of Banking
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SUBCHAPTER C. TRUST DEPOSITS

7 TAC §21.31, §21.32

The amendments are proposed under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

Finance Code, Title 3, Subtitle F, is affected by the proposal.

§21.31. Notice To Engage in Trust Deposits.

(a) Compliance required. A trust company may not deposit trust funds with itself as an investment pursuant to Finance Code, §184.301 [~~Texas Civil Statutes, Article 342a-5.401~~], unless it first complies with this section and §21.32 of this title (relating to Acceptance of Trust Deposits).

(b) Notice of activity. At least 30 days before accepting trust deposits, a trust company shall file a notice with the banking commissioner containing the following information, together with the filing fee required by §21.2 of this title (relating to Filing and Investigation Fees):

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

(4) if trust deposits are to be secured by a pledged fund of securities:

(A) a description of the initial fund of securities securing the anticipated trust deposits, including disclosure of current market value and an evaluation of the securities under the standards of Finance Code, §184.101(e) [~~Texas Civil Statutes, Article 342a-5.101(f)~~]; and

(B) (No change.)

(5) - (7) (No change.)

(c) Action by banking commissioner.

(1) The trust company may begin accepting trust deposits on the 31st day after the date the banking commissioner receives the trust company's completed notice letter unless the banking commissioner specifies an earlier or later date, requests additional information, or prohibits the activity as provided in this subsection. The banking commissioner may prohibit the trust company from accepting trust deposits only if the banking commissioner concludes that:

(A) the trust deposits would not be fully insured or secured as required by Finance Code, §184.301 [~~Texas Civil Statutes, Article 342a-5.401~~], and this section;

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

(D) the trust company is subject to an enforcement order issued pursuant to Finance Code, Chapter 185 [~~under Texas Civil Statutes, Article 342a-6.001 et seq~~], or is not otherwise operating in substantial compliance with all applicable state and federal laws and regulations.

(2) The banking commissioner may extend the 30-day period under paragraph (1) of this subsection if the banking commissioner determines that the trust company's notice raises issues requiring additional information or additional time for analysis. If the 30-day period is extended, the trust company may accept trust deposits only on prior written approval by the banking commissioner, except that the banking commissioner must approve or prohibit the proposed activity or convene a hearing under Finance Code, §181.201 [~~Texas Civil Statutes, Article 342a-3.009~~], not later than the 60th day after the date the banking commissioner receives the trust company's notice. If a hearing is convened, the banking commissioner must approve or prohibit the proposed activity not later than the 30th day after the date the hearing is completed.

(3) A trust company that is denied the right to accept trust deposits by the banking commissioner under this section may appeal as provided by Finance Code, §§181.202-181.204 [~~Texas Civil Statutes, Article 342a-3.010~~], or may file a new notice under this section with additional information relevant to the banking commissioner's determination, with applicable filing fee.

(d) Authority to accept trust deposits. Only a trust company which transacts business with the public may deposit trust funds with itself as an investment pursuant to Finance Code, §184.301 [~~Texas Civil Statutes, Article 342a-5.401~~]. An exempt trust company under Finance Code, §§182.011-182.019 [~~Texas Civil Statutes, Articles 342a-3.011 through 342a-3.019~~], may not accept trust deposits.

(e) (No change.)

§21.32. Acceptance of Trust Deposits

(a) Compliance required. A trust company may not deposit trust funds with itself as an investment pursuant to Finance Code, §184.301 [~~Texas Civil Statutes, Article 342a-5.401~~], unless it first complies with this section and §21.31 of this title (relating to Notice To Engage in Trust Deposits). Trust deposits must be fully insured by deposit insurance issued by the Federal Deposit Insurance Corporation (FDIC), or its successor, or fully secured by a separate fund of pledged securities, by pledged certificates of deposit, or a combination of the foregoing.

(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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SUBCHAPTER D. TRUST COMPANY OFFICES

7 TAC §21.41, §21.42

The amendments are proposed under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

Finance Code, Title 3, Subtitle F, is affected by the proposal.

§21.41. Written Notice and Application for Change of Home Office.

(a) Relocation by notice. If the location that is the home office of a trust company prior to a proposed relocation of the home office is to remain an additional office of the trust company after the relocation, the trust company may relocate its home office by filing a written notice pursuant to Finance Code, §182.202(c) [~~Texas Civil Statutes, Article 342a-3.202(c)~~]. The filed notice must contain all information required by subsection (c) of this section, accompanied by the required

filing fee pursuant to §21.2 of this title (relating to Filing Fees and Cost Deposits), and notice of the submission must be published as required by subsection (e) of this section. A trust company filing notice of a home office relocation under this subsection may relocate its home office on the 31st day after the required notice and fee have been received by the banking commissioner, unless the banking commissioner gives notice in writing, prior to the expiration of that time period, that an earlier or later date is authorized or that additional information and additional time for analysis is required. Upon issuance of a notice requiring additional information and additional time for analysis, the trust company may relocate its home office only on written approval of the banking commissioner. Except as otherwise provided in this section, the banking commissioner shall evaluate the notice under the criteria of §21.42(e) of this title (relating to Establishment and Closing of an Additional Office).

(b) Relocation by application. If Finance Code, §182.202(c) [~~Texas Civil Statutes, Article 342a-3.202(c)~~], and subsection (a) of this section do not apply, a trust company desiring to change its home office location must file an application with the banking commissioner pursuant to Finance Code, §182.202(d) [~~Texas Civil Statutes, Article 342a-3.202(d)~~], setting forth all information required by subsection (d) of this section, accompanied by the required filing fee pursuant to §21.2 of this title, and notice of the submission must be published as required by subsection (e) of this section. The banking commissioner shall issue a written notice no later than 15 days after the date the initial filing is received, as required by §21.4 of this title (relating to Required Information and Abandoned Filings), informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or that the application is deficient and specific additional information is required. Except as otherwise provided in this section, the banking commissioner shall evaluate the application under the criteria of §21.42(e) of this title. An applicant under this subsection may not relocate its home office without the prior written approval of the banking commissioner.

(c) - (f) (No change.)

§21.42. Establishment, Relocation and Closing of an Additional Office.

(a) Establishment or relocation by notice. A trust company may establish or relocate an additional office pursuant to Finance Code, §182.203 [~~Texas Civil Statutes, Article 342a-3.203~~], by filing a written notice with the banking commissioner containing all information required by subsection (b) of this section, accompanied by the required filing fee pursuant to §21.2 of this title (relating to Filing Fees and Cost Deposits), and notice of the submission must be published as required by subsection (d) of this section. A trust company filing notice of an additional office under this subsection may establish the additional office on the 31st day after the date the required notice and fee are received by the banking commissioner unless the banking commissioner gives notice in writing, prior to the expiration of that time period, that an earlier or later date is authorized or that additional information is required pursuant to subsection (c) of this section.

(b) - (h) (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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SUBCHAPTER E. CHANGE OF CONTROL

7 TAC §21.51

The amendments are proposed under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

Finance Code, Title 3, Subtitle F, is affected by the proposal.

§21.51. Application for Acquisition or Change of Control of Trust Company.

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

(c) Public notice. Not earlier than 14 days before, nor later than 14 days after the date of initial submission of an application filed [~~Upon notification that an initial application is complete and accepted for filing~~] pursuant to §21.4 of this title (relating to Required Information and Abandoned Filings), the applicant shall publish notice as required by Finance Code, §183.002(d) [~~Texas Civil Statutes, Article 342a-4.002(d)~~], and §21.5 of this title (relating to Public Notice) in the county where the trust company's home office is located. One publication under this subsection is adequate unless the banking commissioner expressly requires additional notice.

(d) Confidentiality. Information obtained by the banking commissioner under this section is confidential and may not be disclosed by the banking commissioner or an officer or employee of the department, subject only to such disclosure as may be permitted by Finance Code, §183.002(c) [~~Texas Civil Statutes, Article 342a-4.002~~], or by §3.111 of this title (relating to Confidential Information).

(e) Grandfather clause. A principal shareholder or participant that is considered to control a trust company, under Finance Code, §183.001(b) [~~Texas Civil Statutes, Article 342a-4.001(a)~~], is exempt from filing an application under this section until the principal shareholder acquires one or more additional shares or participation shares of the trust company.

(f) Capital requirements. A person or entity seeking to acquire control of a trust company subject to this section must bring the trust company into compliance with the minimum capital requirements of Finance Code, §182.008 [~~Texas Civil Statutes, Article 342a-3.007~~], or such amount as required by the banking commissioner at the time the transaction is consummated.

(g) Exemptions. In addition to the acquisitions specifically exempted pursuant to Finance Code, §183.001(d) [~~Texas Civil Statutes, Article 342a-4.001(c)~~], the following types of involuntary acquisitions of control do not require prior written approval of the banking commissioner:

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

(h) Notices in lieu of filing. In the event that an application is not required because of exemption under Finance Code, §183.001(d) [~~Texas Civil Statutes, Article 342a-4.001(c)~~], or subsection (g) of this section, but an application is required to be filed with a federal regulatory authority or a regulatory authority of another state, a copy of the application as filed with another agency must be filed with the banking commissioner within seven days of the date of such other filing or

filings. A notice in lieu of filing is also required of a person claiming an exemption under Finance Code, §183.001(d) [~~Texas Civil Statutes, Article 342a-4.001(c)~~], or paragraph (5) or (6) of subsection (g) of this section. This notice must be filed before the securities acquired are voted and must be accompanied by a completed authorization pursuant to subsection (b)(2) of this section. No filing fees are required for notices filed under this section; however, should the banking commissioner determine that an application is required, the appropriate filing fee pursuant to §21.2 of this title is required.

(i) Approval. Automatic approval; conditional approval. If an application filed under this section is not approved by the banking commissioner or is not set for hearing on or before the 60th day after notice is published pursuant to subsection (c) of this section, the transaction may be consummated. The banking commissioner may, before the expiration of the initial 60-day period, give the applicant written notice that the application has been approved, in which case the transaction may be immediately consummated on receipt of the notice. The banking commissioner may also, before the expiration of the initial 60-day period, give an applicant written notice that the application has been approved subject to certain conditions. The applicant shall enter into a written agreement with the banking commissioner concerning the conditions on or before the 30th day after the date of notification of conditional approval. An agreement entered into by the applicant and the banking commissioner concerning conditional approval is enforceable against the applicant and the trust company and is considered for all purposes an agreement under the provisions of Finance Code, §185.002(a) [~~Texas Civil Statutes, Article 342a-6.002(a)~~]. In the event that an applicant who has received conditional approval does not enter into an agreement with the banking commissioner as required by this subsection, the banking commissioner shall set the matter for hearing.

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

(m) Hearing on application. The banking commissioner shall set an application for hearing on or before the 60th day after notice is published as required by Finance Code, §183.003 [~~Texas Civil Statutes, Article 342a-4.003~~], and subsection (i) of this section. The notice of hearing must comply with Government Code, §2001.051, and shall state that the purpose of the hearing is to give the applicant an opportunity to show all required qualifications for the banking commissioner's approval of the acquisition or change of control application have been met. The applicant has the burden of showing all such required qualifications by a preponderance of evidence. After the hearing, the banking commissioner shall grant or deny the application based solely upon the evidence presented at the hearing. An applicant may not appeal denial of an application or conditional approval of an application until a final order is issued. If after a hearing has been held, the banking commissioner has entered an order denying the application, and the order has become final, the applicant may appeal the final order as provided by Finance Code, §183.004 [~~Texas Civil Statutes, Article 342a-4.004~~], and Government Code, Chapter 2001.

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SUBCHAPTER F. APPLICATION FOR MERGER, CONVERSION, OR SALE OF ASSETS

7 TAC §§21.61, 21.62, 21.64, 21.67, 21.68, 21.72, 21.76

The amendments are proposed under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

Finance Code, Title 3, Subtitle F, is affected by the proposal.

§21.61. Definitions.

(a) Words and terms used in this subchapter that are defined in the Trust Company Act or in §21.1 if this title [~~Texas Civil Statutes, Articles 342a-1.001 et seq~~], have the same meanings as defined therein.

(b) The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates the contrary.

(1) - (15) (No change.)

(16) Share exchange--A transaction by which one or more trust companies, fiduciary institutions, or other entities acquire all of the outstanding shares of one or more classes or series of one or more trust companies under the authority of Finance Code, §182.301 [~~Texas Civil Statutes, Article 342a-3.301~~], and the Texas Business Corporation Act, Article 5.02.

(17) Trust company--A state trust company as defined by Finance Code, §181.002(a) [~~Texas Civil Statutes, Article 1.002(a)(46)~~].

(18) (No change.)

§21.62. General.

Without the prior written consent of the banking commissioner, a trust company may not consummate a merger, conversion, sale of assets, purchase of assets, or share exchange. Except as otherwise provided by Finance Code, Chapter 182, Subchapters D - F [~~Texas Civil Statutes, Article 342a, Chapter 3, Subchapters D, E, and F~~], or this subchapter, an application must be filed with the banking commissioner for review and consideration of the proposed transaction.

§21.64. Application for Merger or Share Exchange.

(a) Scope. This section governs an application for merger or share exchange pursuant to Finance Code, §§182.301 et seq [~~Texas Civil Statutes, Articles 342a-3.301 et seq~~]. This section does not apply to a merger that results in a trust company becoming another fiduciary institution under another regulatory system pursuant to Finance Code, §182.501 [~~Texas Civil Statutes, Article 342a-3.501~~], or other applicable law, and such transactions are governed by §21.67 of this title (relating to Merger, Reorganization, or Conversion of a Trust Company Into Another Fiduciary Institution).

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

(d) Public notice. Not earlier than 14 days before or later than the 14th day after the date of the initial submission of the [~~Within 14 days prior to or after submission of the initial~~] application, the applicant shall publish notice in accordance with the requirements of §21.5 of this title (relating to Public Notice) in the specified communities where the home office of the applicant, the target entity, and the resulting trust company are located.

(e) Approval by the banking commissioner and filings with a chartering agency.

(1) The banking commissioner shall approve a merger or share exchange only if the application indicates substantial compliance

with all conditions of Finance Code, §182.302(c) [~~Texas Civil Statutes, Article 342a-3.302(c)~~].

(2) (No change.)

(3) After approval of an application under this section by the banking commissioner, the articles of merger or share exchange previously filed with the chartering agency, if applicable, will be accepted and a certificate of merger or share exchange will be issued by the banking commissioner who shall perform the duties required by Finance Code, §182.303(a) [~~Texas Civil Statutes, Article 342a-3.303(a)~~]. With respect to a transaction that requires filing with the Texas secretary of state, if the banking commissioner does not approve the articles of merger or share exchange on or before the 90th day after the filing of the articles of merger with the Texas secretary of state, the applicant must refile the articles of merger or share exchange with both the Texas secretary of state and with the banking commissioner.

(4) (No change.)

(5) The date of issuance of the certificate of merger or share exchange by the banking commissioner constitutes the date of approval pursuant to Finance Code, §182.303(b) [~~Texas Civil Statutes, Article 342a-3.303(b)~~], unless the merger or exchange agreement provides for a later effective date which has been approved by the banking commissioner.

§21.67. Notice of Merger, Reorganization, or Conversion of a Trust Company into Another Fiduciary Institution.

(a) Scope. This section governs notice of the merger, reorganization, or conversion of a trust company into another form of fiduciary institution in a manner that results in extinguishment of the trust company charter, pursuant to Finance Code, §182.501 [~~Texas Civil Statutes, Article 342a-3.501~~], or other applicable law.

(b) (No change.)

(c) Notices, publication, and certificate of authority.

(1) The applicant shall submit a copy of the published notice of the proposed transaction required by the successor regulatory authority or shall publish notice as required by §21.5 of this title (relating to Public Notice). Submission of such notice, with the publisher's certificate required by subsection (b)(6) of this section, is considered notice of the transaction in accordance with Finance Code, §182.501(c)(2) [~~Texas Civil Statutes, Article 3421-3.501(c)(2)~~]. The banking commissioner may require, upon written notice to the applicant, such other publication requirements at such times and places and in such manner as considered appropriate.

(2) (No change.)

(d) (No change.)

§21.68. Opinion of Legal Counsel.

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

(c) Unless specifically noted in the opinion, the banking commissioner will assume that the opinions expressed are based upon and subject to the assumptions, qualifications, limitations and exceptions set forth in the Accord, provided the Accord is incorporated by reference. In addition, whether or not stated in the Accord, if specifically noted in the opinion, counsel:

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

(4) may qualify the opinions given as opinions solely for the benefit of the banking commissioner that may not be quoted in whole or in part or otherwise referred to in another document or report, and that may not be furnished to a person or entity other than the banking commissioner and the department without the written consent of counsel, except as may be permitted or required by law, including Finance Code, §§181.301 et seq [~~Texas Civil Statutes, Article 342a-2.101 et seq~~], and Government Code, Chapter 552.

(d) - (f) (No change)

§21.72. Approval; Conditional Approval; Denial of Application; Hearings.

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

(e) Hearings on denial of applications. Requests for hearing under this subchapter will be forwarded to the administrative law judge who shall enter appropriate orders and conduct the hearing on or before a date that is 60 days after the date the request for hearing was received, or as soon after that as is reasonably possible, under Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemaking) and [~~the~~] Government Code, Chapter 2001. A proposal for decision, exceptions and replies to such proposal for decision, the final decision of the banking commissioner, and motions for rehearing are governed by Chapter 9 of this title. An applicant may not appeal denial of an application or conditional approval of an application until a final order is issued. After a hearing and final order, the applicant may appeal the final order as provided in Finance Code, §§181.202 - 181.204 [~~the Act, §31.202~~].

§21.76. Confidentiality.

Information obtained by the banking commissioner under this subchapter is presumed to be public information unless such information is confidential under Finance Code, §§181.301 et seq [~~Texas Civil Statutes, Articles 342a-2.101 et seq~~], or under exceptions contained in Government Code, Chapter 552. The applicant has the burden to request confidential treatment for specified information, to segregate and mark documents claimed to be confidential, and to specifically reference the provision of law that allows confidential treatment.

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

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203906
Everette D. Jobe
Certifying Official
Texas Department of Banking
Proposed date of adoption: August 16, 2002
For further information, please call: (512) 475-1300

SUBCHAPTER G. CHARTER AMENDMENTS AND CERTAIN CHANGES IN OUTSTANDING STOCK

7 TAC §21.91, §21.92

The amendments are proposed under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

Finance Code, Title 3, Subtitle F, is affected by the proposal.

§21.91. Acquisition and Retention of Shares as Treasury Stock.

(a) Permitted acquisition of treasury stock. Pursuant to Finance Code, §§182.103, 184.101, and 184.102 [~~Texas Civil Statutes, Articles 342a-3.103, 342a-5.101, and 342a-5.102~~], a trust company

may acquire its own shares to be held as treasury stock, if prior notice of the proposed transaction is filed with the banking commissioner pursuant to subsection (b) of this section and the plan of acquisition has not been disapproved by the banking commissioner pursuant to subsection (d) of this section.

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

(d) Disapproval. The banking commissioner may disapprove the proposed plan of acquisition if the banking commissioner concludes that the trust company's plan of acquisition:

(1) (No change.)

(2) may threaten the adequacy of the trust company's liquidity and the requirements of Finance Code, §184.101(b) [~~Texas Civil Statutes, Article 342a-5.101(b)~~];

(3) may threaten the adequacy of the trust company's equity capital or its restricted capital, or could result in a trust company failing to maintain the minimum required level in restricted capital set forth in Finance Code, §182.103 [~~Texas Civil Statutes, Article 342a-3.103~~], or §17.1(b) of this title; or

(4) (No change.)

(e) - (h) (No change.)

§21.92. Amendment of Articles To Effect a Reverse Stock Split.

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

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

(4) Share--A unit representing ownership of at least part of the proprietary interests of a trust company, whether or not divided or subdivided by means of classes, series, relative rights, or preferences; and includes a stock or similar security; or a security convertible, with or without consideration, into such a security, or carrying a warrant or right to subscribe to or purchase such a security; or such warrant or right; or another security determined by the banking commissioner to be an equity security as defined by Finance Code, §181.002(a) [~~pursuant to Texas Civil Statutes, Article 342a-1.002(a)(44)~~].

(5) (No change.)

(b) Procedure. Pursuant to Finance Code, §182.101 [~~Texas Civil Statutes, Article 342a-3.101~~], to effectuate a reverse stock split in compliance with this section, a trust company shall:

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

(c) Application. A trust company proposing a reverse stock split transaction shall file with the banking commissioner a written application seeking approval of the proposed amendment to its articles of association, stating the results of the vote of shareholders regarding the proposed reverse stock split and stating the percentage of shares of unaffiliated shareholders that were voted in favor of the proposed reverse stock split, or undertaking to supplement the application after conditional approval is obtained to provide shareholder approval information, setting forth or including as exhibits the following:

(1) the original and one copy of the proposed amendment to the articles of association, to be processed in the manner required by Finance Code, §182.101 [~~Texas Civil Statutes, Article 342a-3.101~~], and a description of the material terms of the proposed reverse stock split, including terms or arrangements relating to any shareholder of the trust company which are not identical to those relating to other shareholders of the same class;

(2) - (14) (No change.)

(d) Standards for approval.

(1) The banking commissioner shall process the proposed reverse stock split in accordance with Finance Code, §182.101(d) [~~Texas Civil Statutes, Article 342a-3.101(d)~~]. The banking commissioner shall require that the reverse stock split be for a valid business purpose of the trust company, viewed as an entity distinct from its affiliates, and be accomplished through fair dealing with and a fair price to unaffiliated shareholders. The banking commissioner may impose conditions on approval, including a condition that an independent appraisal report be obtained regarding the value of the unaffiliated shareholders' shares, exclusive of any element of value arising from the accomplishment or expectation of the proposed transaction, and without minority discount. Share value determined by an independent and properly prepared appraisal report that is fully disclosed to trust company shareholders or by the market price of publicly traded shares will be presumed to be a fair value unless extenuating circumstances to the contrary are specifically noted.

(2) In the event approval of the banking commissioner is obtained prior to approval by shareholders, the trust company shall file a statement with the banking commissioner certifying that any future event or condition upon which the approval of the transaction was conditioned has been satisfied and the date that each such condition was satisfied. Upon receipt of such statement, the banking commissioner shall file the approved amendment to the articles of association in accordance with Finance Code, §182.101(e) [~~Texas Civil Statutes, Article 342a-3.101(d)~~].

(3) (No change.)

(e) Exemptions.

(1) (No change.)

(2) An amendment to the articles of association that implements a reverse stock split exempt from this section is filed and processed in accordance with Finance Code, §182.101 [~~Texas Civil Statutes, Article 342a-3.101~~].

(3) (No change.)

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

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Everette D. Jobe
Certifying Official
Texas Department of Banking
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For further information, please call: (512) 475-1300

SUBCHAPTER F. APPLICATION FOR MERGER, CONVERSION, OR SALE OF ASSETS

7 TAC §21.71

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

The Finance Commission of Texas (the commission), proposes the repeal of §21.71, concerning waiver of requirements.

Section 21.71 authorizes the banking commissioner to waive a requirement in Chapter 21, Subchapter F, concerning applications for merger, conversion, or sale of assets. The commission proposes to repeal the provision as unnecessary after the commission adopts new §21.9, which will authorize the commissioner to waive or modify any requirement in Chapter 21. The commission is concurrently proposing new §21.9 in this issue of the *Texas Register*.

Gayle Griffin, Deputy Commissioner, Texas Department of Banking, has determined that, for each year of the first five years that the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Griffin also has determined that, for each of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal is deletion of an unnecessary regulation. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

Comments concerning the proposed repeal should be submitted within 30 days of publication to Robin Robinson, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by email to robin.robinson@banking.state.tx.us.

The repeal is proposed under Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company Act, Finance Code, Title 3, Subtitle F.

Finance Code, Title 3, Subtitle F is affected by the proposed repeal.

§21.71. Waiver of 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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Everette D. Jobe
Certifying Official
Texas Department of Banking
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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 §1.14

The Texas Department of Housing and Community Affairs (the Department) proposes new §1.14, concerning Housing Sponsor: Tenant Management Selection. The purpose of this section is to set standards and restrictions concerning tenant and management selection by a housing sponsor in accordance with §2306.269 of the Government Code as added by Senate Bill 322, 77th Session of the Texas Legislature.

Ms. Edwina P. Carrington, Executive Director, has determined that for 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 rule.

Ms. Carrington also has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be more efficient disposition of complaints. 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 the section as proposed. The proposed new rule 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 e-mail at the following address: apaddock@tdhca.state.tx.us.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306; and in accordance with the Texas Government Code §2001.039.

The new section affects no other code, article or statute.

§1.14. Housing Sponsor: Tenant and Management Selection.

(a) Purpose. The purpose of this section is to set standards for tenant and management selection by a housing sponsor and to prohibit a housing development funded or administered by the Department, including a development supported with a housing tax credit allocation, from:

(1) excluding an individual or family from admission to the development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f); and

(2) using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than 2.5 times the individual or family's share of the total monthly rent payable to the owner of the development.

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

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

(2) Housing development--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 Chapter 2306 of the Government Code 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:

(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 nonhousing facilities, such as administrative, community, and recreational facilities

the Department determines to be necessary, convenient, or desirable appurtenances; and

(B) multifamily dwellings in rural and urban areas.

(3) Housing sponsor--means:

(A) an individual, including an individual or family of low and very low income or family of moderate income, joint venture, partnership, limited partnership, trust, firm, corporation, or cooperative that is approved by the department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development, subject to the regulatory powers of the department and other laws; or

(B) in an economically depressed or blighted area, or in a federally assisted new community located within a home-rule municipality, the term may include an individual or family whose income exceeds the moderate income level if at least 90% of the total mortgage amount available under a mortgage revenue bond issue is designed for individuals and families of low income or families of moderate income.

(4) Management plan--A written plan clearly stating the following objectives:

(A) prospective applicants who hold Section 8 vouchers or certificates are welcome to apply and will be provided the same consideration for occupancy as any other prospective tenant;

(B) any minimum income requirements for Section 8 voucher and certificate holders will only be applied to the portion of the rent the prospective tenant would pay, provided, however, that if Section 8 pays 100% of the rent for the unit, the housing sponsor may establish other reasonable minimum income requirements to establish other reasonable minimum income requirements to ensure that the tenant has the financial resources to meet daily living expenses. Minimum income requirements for Section 8 voucher and certificate holders will not exceed 2.5 times the portion of rent the tenant pays; and

(C) all other screening criteria, including employment policies or procedures and other leasing criteria (such as rental history, credit history, criminal history, etc.) must be applied to prospective tenants uniformly and in a manner consistent with the Texas and Federal Fair Housing Acts and with Department requirements.

(5) Non-compliance score--The scoring and methodology used to determine the compliance status of applicants applying for Departmental funding.

(c) Applicability. The policies, standards, and sanctions established by these rules apply only to:

(1) multifamily housing developments that receive the following assistance from the Department on or after January 1, 2002:

(A) a loan or grant in an amount greater than 33% of the market value of the development on the date the recipient took legal possession of the development; or

(B) a loan guarantee for a loan in an amount greater than 33% of the market value of the development on the date the recipient took legal title to the development; or

(2) multifamily rental housing developments funded or administered by the Department as low income tax credit property whose application for an allocation of low income housing tax credits for that housing development is received by the Department on or after August 10, 1993.

(3) A housing development that benefits from the incentive program under §2306.805 of the Texas Government Code is subject to the policies, standards, and sanctions established by these rules.

(d) Procedures. The following procedures apply to the selection of tenants and management by all housing sponsors.

(1) Tenants must be income eligible under the rules and regulations of the program or activity funded.

(2) Housing Sponsors must apply all other screening criteria, including employment policies or procedures and other leasing criteria (such as rental history, credit history, criminal history, etc.) uniformly and in a manner consistent with the Texas and Federal Fair Housing Acts, program guidelines, and the Department rules.

(3) Income determination must be made in a manner consistent with Section 8, of the United States Housing Act of 1937 (42 U.S.C. Section 1437f) and the guidelines established in Handbook 4350.3, as amended and promulgated by the U. S. Department of Housing and Urban Development (HUD).

(4) The Housing Sponsor shall not exclude an individual or family from admission to the development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

(5) The Housing Sponsor shall not use a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income that exceeds 2.5 times the individual or family's share of the total monthly rent payable to the owner of the development.

(6) The Housing Sponsor must maintain a written management plan that is available for review upon request and states the intention of the development owner to comply with state and federal fair housing and antidiscrimination laws.

(7) The Housing Sponsor must ensure that management posts Fair Housing logos and a Fair Housing poster in the leasing office.

(8) The Housing Sponsor must approve and distribute a written affirmative marketing plan to the property management and on-site staff.

(9) The department shall require a land use restriction agreement providing for enforcement of the restrictions by the department, tenants of the development, or by a private party that includes the right to recover reasonable attorney's fees if the party seeking enforcements of the restrictions is successful.

(10) The Housing Sponsor must communicate annually during the first quarter of each year with the administrator of each Section 8 program, which has jurisdiction within the geographic area where the development is located. Such communication will include information on the unit characteristics and rents, will advise the administrating agency that the property accepts Section 8 vouchers and certificates, and will treat referrals in a fair and equal manner. Copies of such correspondence must be available during on-site reviews conducted by the Department.

(11) A prospective tenant participating in the voucher program shall report to the administrator of the Section 8 program that provided the certificate or voucher an exclusion from admission to a housing development based on a financial or minimum income standard requiring the tenant to have a monthly income of more than 2.5 times the tenant or tenant's family share of the total monthly rent payable to the owner of the development. The administrator shall promptly report such exclusion to the Department.

(e) Sanctions. A Housing Sponsor of a multifamily rental housing development that fails to comply with the procedures pursuant to subsection (d) of this section is subject to the following sanctions:

(1) Failure to lease to a prospective tenant due to the applicant's status as a recipient of a federal rental assistance voucher or certificate will result in a material non-compliance score, and

(2) A complaint of exclusion from admission as described in subsection (d)(11) of this section, that has been verified by the Department, shall result in a non-compliance score for a period of one year from the date of the Department's verification of the complaint.

(f) These rules, policies, standards, and sanctions are enforceable by the Department, tenants of the development, or by private parties against the initial owner or any subsequent owners.

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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Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3726

TITLE 16. ECONOMIC REGULATION

PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 101. PRACTICE AND PROCEDURE

SUBCHAPTER C. ADJUDICATIVE PROCEEDINGS AND HEARINGS

16 TAC §101.62, §101.66

The Texas Motor Vehicle Board of the Texas Department of Transportation proposes amendments to 16 TAC §101.62, Replies to Exceptions, and §101.66, Submission of Amicus Briefs.

The amendment to 16 TAC §101.62 will clarify that the Board will not allow parties to a contested case to file multiple written responses to replies to exceptions, beyond those currently allowed under the Board's rules. The amendment to 16 TAC §101.66 proposes changes to the current deadline for amicus briefs, so that if adopted, the amicus curiae will be required to file its brief no later than the deadline for exceptions to the proposal for decision. The amendment also allows parties to file a written response to the amicus brief no later than the deadline for replies to exceptions to be filed.

The Board proposes an amendment to 16 TAC §101.62, concerning replies to exceptions, because many parties to contested cases before the Board file multiple written responses to arguments brought forth by their opponents in exceptions to the proposal for decision and replies thereto. The Board considers many of these submissions that are filed outside of the rules extraneous and unnecessarily repetitive. Furthermore, the documents clutter the Board's record and make efficient adjudication of contested cases more difficult from a procedural standpoint.

Additionally, the Board proposes an amendment to 16 TAC §101.66, concerning amicus briefs. The amendment will change the deadline to submit amicus brief to the deadline for filing exceptions to the proposal for decision, rather than the current deadline of seven days prior to the Board meeting at which the matter will be considered. Also, the amended rule will provide a deadline for responses to the amicus brief, which will be due no later than the deadline for replies to exceptions. The Board proposes this amendment to address concerns that parties to a contested case do not have sufficient time to reply to new arguments presented in an amicus brief under the current rule. Furthermore, the amendment to this section will allow for an increase in the amount of time that the Board has to review an amicus brief and the responses when considering a contested case.

Brett Bray, Director, Motor Vehicle Division, has determined that for the each year of the first five years these sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Mr. Bray has also determined that for each of the first five years the sections are in effect the public benefit anticipated from the proposed amendments will be greater efficiency in the contested case process and greater due process for all parties before the Board. There will be no economic cost to persons required to comply with the sections as proposed for the first five years the proposals are in effect. There will be no significant impact on local economies, overall employment or small businesses as a result of enforcing or administering these sections.

The Board requests comments from any interested person. Comments (16 copies) may be submitted to Brett Bray, Director, Motor Vehicle Board, Texas Department of Transportation, P.O. Box 2293, Austin, Texas 78768, (512) 416-4899. The Motor Vehicle Board will consider adoption of the proposals at its meeting on September 19, 2002. The deadline for receipt of comments on the proposed amendments and new rule is 5:00 p.m. on August 28, 2002.

The amendments are proposed under the Texas Motor Vehicle Commission Code §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the Agency.

Texas Motor Vehicle Commission Code §3.03 and §3.08 are affected by the proposed amendments.

§101.62. Replies to Exceptions [~~Exception~~].

Replies to exceptions may be filed within 10 days after the date of filing such exceptions. It is within the hearing officer's discretion, upon notice to all parties in interest, to extend the time for filing such reply. No further written responses or replies are allowed.

§101.66. Submission of Amicus Briefs.

Any interested party wishing to file an amicus brief [~~filed by an interested party in a contested case~~] for consideration by the members of the Board [~~board~~] in their decision regarding a contested case should file its brief no later than the deadline for exceptions [~~must be filed with the board at least seven days prior to the date of the board meeting at which the case is scheduled for consideration and decision~~]. A party may file one written response to the brief filed by the amicus curiae no later than the deadline for replies to exceptions. Any amicus brief, or response to that brief, not filed within such time will not be considered by the members of the Board [~~board~~], unless good cause may be shown why this deadline should be waived or extended.

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

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203945
Brett Bray
Director
Texas Motor Vehicle Board
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For further information, please call: (512) 416-4899

CHAPTER 107. WARRANTY PERFORMANCE OBLIGATIONS

16 TAC §107.10

The Texas Motor Vehicle Board proposes an amendment to 16 TAC §107.10, Warranty Performance Obligations.

The proposed amendment clarifies that a manufacturer, distributor, or converter who reacquires a vehicle under 16 TAC §107.10(4) must re-title the vehicle in Texas before reselling it. Currently, the rule does not expressly impose a re-titling requirement, despite the fact it may be incidental or implied in the reacquisition of the vehicle. As a result of the lack of clarity in the rule, some manufacturers, distributors, and converters re-title reacquired vehicles in Texas, some re-title the vehicles in another state, and others transfer the vehicles by assigning the back of the titles. A re-titling provision will impose uniform requirements on manufacturers, distributors, and converters. In addition, re-titling will facilitate the Board's enforcement of the disclosure requirements and hinder what is known in the industry as "lemon laundering" or "title washing". Furthermore, it will facilitate the branding of titles by the Vehicle Titles and Registration Division.

Brett Bray, Director, Motor Vehicle Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Bray has also determined that for each year of the first five years the section is in effect, the anticipated public benefits are that the public will have a clearer understanding of the re-title requirement. The public will also benefit by the Board's enhanced enforcement of the reacquired vehicle disclosure requirements, the improvements in title branding and the hindrances placed on "lemon laundering" or "title washing".

There will be no effect on small businesses. The anticipated economic cost to persons required to comply with the section as amended is indeterminate but some manufacturers, distributors and converters will have some nominal amount of increased cost to re-title vehicles. There will be no impact on local economies or overall employment as a result of this amendment.

Comments, in 16 copies, may be submitted to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, P.O. Box 2293, Austin, Texas 78768, (512) 416-4899. The Motor Vehicle Board will consider adoption of the proposed amendments at its meeting on September 19, 2002. The deadline for receipt of comments on the proposed amendments is 5:00 p.m. on August 28, 2002.

The amendment is proposed under the Texas Motor Vehicle Commission Code §3.06 which provides the Motor Vehicle Board with the authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

Texas Motor Vehicle Commission Code §3.08 and §6.07 are affected by the proposed amendment.

§107.10. Compliance with Order Granting Relief.

Compliance with the Board's order will be monitored by the Board.

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

(4) If a manufacturer, converter, or distributor replaces or repurchases a vehicle pursuant to a Board order, reacquires a vehicle to settle a Texas Motor Vehicle Commission Code §3.08(i) or §6.07 complaint, or brings a vehicle into the state of Texas which has been reacquired to resolve a warranty claim in another jurisdiction, the manufacturer, converter, or distributor shall, prior to resale of such vehicle, re-title the vehicle in Texas and issue a disclosure statement on a form provided by or approved by the Board through its director. In addition, the manufacturer, converter, or distributor reacquiring the vehicle shall affix a disclosure label provided by or approved by the Board through its director on an approved location in or on the vehicle. Both the disclosure statement and the disclosure label shall accompany the vehicle through the first retail purchase. Neither the manufacturer, converter, or distributor nor any person holding a license or general distinguishing number issued by the Board under the Code or Chapter 503, Transportation Code, shall remove or cause the removal of the disclosure label until delivery of the vehicle to the first retail purchaser. A manufacturer, converter, or distributor shall provide the Board, in writing, the name, address and telephone number of any transferee, regardless of residence, to whom the manufacturer, distributor or converter, as the case may be, transfers the vehicle within 60 days of each transfer. The selling dealer shall return the completed disclosure statement to the Board within 60 days of the retail sale of a reacquired vehicle. Any manufacturer, converter, or distributor or holder of a general distinguishing number who violates this section is liable for a civil penalty or other sanctions prescribed by the Code. In addition, the manufacturer, converter, or distributor must repair the defect or condition in the vehicle that resulted in the vehicle being reacquired and issue, at a minimum, a basic warranty (12 months/12,000 mile, whichever comes first), except for non-original equipment manufacturer items or accessories, on a form provided by or approved by the Board through its director, which warranty shall be provided to the first retail purchaser of the vehicle.

(5) - (7) (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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Brett Bray
Director
Texas Motor Vehicle Board
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

19 TAC §62.1071

The Texas Education Agency (TEA) proposes an amendment to §62.1071, concerning the administration of wealth equalization. The section addresses wealth equalization provisions relating to identification, alternative calculation of wealth, actions and costs to equalize wealth, administrative requirements, noncompliance, excellence exemption, and property value decline. The proposed amendment would exercise an option under Texas Education Code (TEC), Chapter 41, Subchapter E, relating to education of nonresident students.

Questions raised concerning the benefits that may accrue to a district that may exercise an option under TEC, Chapter 41, warrant clarification of policies and adoption of those permissible actions in rule form. The effect of the proposed amendment to 19 TAC §62.1071 would be to express clear requirements for the satisfactory use of this option for reduction in taxable wealth per student. A school district that exercises an option must conform to certain requirements that will limit the benefits available to the district, as well as require the disclosure of any other relevant financial transactions between parties.

Proposed language in subsection (d)(1) provides clarification of provisions relating to districts purchasing attendance credits in accordance with TEC, Chapter 41, Subchapter D.

Proposed language in subsection (d)(2) provides clarification of provisions relating to districts paying to educate nonresident students from a partner district in accordance with TEC, Chapter 41, Subchapter E. The amendment places into rule provisions relating to discounts that have been previously described in the wealth equalization handbook.

Proposed language in subsection (e) places into rule administrative requirements that have been previously described in the wealth equalization handbook.

Joe Wisnoski, assistant commissioner for school finance and fiscal analysis, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the amendment.

Mr. Wisnoski has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be a clear statement in rule form of the acceptable practices between school districts relative to the administration of TEC, Chapter 41. Currently, permissible actions are partially incorporated into language of agreements between school districts. Placement of these provisions in the *Texas Administrative Code* makes application to all agreements clear and clarifies the responsibilities of each party. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code (TEC), §41.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of TEC, Chapter 41, Equalized Wealth Level.

The amendment implements the Texas Education Code, §41.006.

§62.1071. Administration of Wealth Equalization.

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

(d) Costs to equalize wealth. For each year in which one or more options to equalize wealth is exercised, the commissioner determines the cost and the associated cycle.

(1) Districts purchasing attendance credits from the state in accordance with TEC, Chapter 41, Subchapter D (Option 3), may obtain a discount in the form of an early agreement credit in accordance with TEC, §41.098. The discount is limited to 4.0% of the computed cost of Option 3 before any discounts are applied or $80 multiplied by the number of WADA purchased, whichever is less. To qualify, the district subject to the provisions of TEC, Chapter 41, must submit a signed Option 3 agreement to the TEA with a postmark on or before September 1 of the applicable year.

(2) Districts paying to educate nonresident students from a partner district in accordance with TEC, Chapter 41, Subchapter E (Option 4), may obtain a discount in the form of an efficiency credit in accordance with TEC, §41.121. [~~Such discounts may be obtained for certain programs approved by the commissioner and described in the wealth equalization handbook published yearly by the commissioner.~~] The discount is limited to 5.0% of the computed cost of Option 4 before any discounts are applied or $100 multiplied by the district's WADA for TEC, Chapter 41, whichever is less. Such discounts may be obtained for the following programs approved by the commissioner.

(A) The partner agrees to use at least 50% of the gain from the sale of WADA for a 30-day extended year program for all eligible kindergarten through Grade 8 students for the school year in accordance with TEC, §29.082.

(B) The partner agrees to use at least 50% of the gain from the sale of WADA for enhancement of an existing alternative education program for behavior management for all eligible students for the school year in accordance with TEC, §37.008. The funds used must be in excess of amounts expended for the basic operation of the program pursuant to TEC, §37.008(g).

(C) The partner agrees to use at least 50% of the gain from the sale of WADA for a juvenile justice alternative education program for the school year in accordance with TEC, §37.011. The expenditures for this program must be used to pay for additional costs not funded by member districts pursuant to TEC, §37.012.

(D) The partner agrees to use at least 50% of the gain from the sale of WADA for a combined program of at least two of the following programs for the school year: extended year, alternative education (enhancement of), and juvenile justice alternative education. Each of the programs must meet the corresponding requirements described in subparagraphs (A)-(C) of this paragraph.

(E) The partner agrees to use at least some portion of the gain from the sale of WADA for combined programs plus any remaining funds for instructional technology. Any of the three following

programs apply, singly or in any combination, for the school year: extended year, alternative education, and juvenile justice alternative education. Each of the programs must meet the corresponding requirements described in subparagraphs (A)-(D) of this paragraph. In addition to the funds committed to any one or combination of the programs described in subparagraphs (A)-(D), all of the remaining gain must be used for instructional technology.

(F) The partner agrees to use all of the gain from the sale of WADA for instructional technology. That technology may involve computer networking of instruction among or between its campuses and/or from the district or its campuses to an education service center (ESC), other Internet service provider (ISP), or local telephone company point of presence (teleco POP). A portion of the gain may be sent to the ESC, ISP, or teleco POP, as long as the funds are expended for connecting such services. A portion of the gain may be sent to the ESC for instructional technology purposes that include the services described in clauses (i)-(iv) of this subparagraph. If any of the gain is expended in this manner, the district subject to the provisions of TEC, Chapter 41, may not obtain free or reduced-price instructional technology services from the service provider. Annual charges to the district subject to the provisions of TEC, Chapter 41, must be equal to at least the amount paid by the partner to the service provider for the year for equivalent services. If this option is exercised, the executive director of the entity must sign the contract agreement. Instructional technology purposes for which a portion of the gain may be sent to the ESC include:

(i) the expansion and/or upgrade of networks, labs, classroom applications, and related telecommunications systems;

(ii) the integration of technology into the teaching/learning process;

(iii) the acquisition and distribution of Internet services; or

(iv) the implementation and/or expansion of distance learning or other innovative programs.

(G) The partner agrees to use at least 50% of the gain from the sale of WADA for an innovative education program. The gain on the sale of WADA may not be used for general capital outlay unrelated to improving student performance. The commissioner retains full discretion to approve or reject the proposed educational program for this purpose.

(H) Each partner agrees to use 100% of the gain from the sale of WADA to participate in a technology consortium in accordance with the provisions of TEC, §41.099. At least three partner districts must be members of the consortium. The district subject to the provisions of TEC, Chapter 41, may be a member of the consortium but must pay at market value for all services received. Market value is determined by the consortium, subject to review by the TEA division responsible for financial audits and the requirements of paragraph (3) of this subsection. Partner districts must reside, at least in part, in a county or counties with a population of less than 40,000. The technology consortium form of Option 4 must be combined with Option 3, the purchase of attendance credits from the state, in order to enable the district subject to the provisions of TEC, Chapter 41, to retain its "hold harmless" status. The gain resulting from the sale of WADA (for all partners combined) must be limited to 10% of the cost of buying WADA of the district subject to the provisions of TEC, Chapter 41.

(3) To the extent that a district subject to the provisions of TEC, Chapter 41, exercising Option 4 receives any service or product from an entity that receives a portion of the gain from an Option 4 arrangement, the price paid for the service or product must be at fair market value. For the purposes of this requirement, fair market value is defined as the price that would be paid by any other party had the gain from the Option 4 arrangement not been applied to reduce the cost.

(4) Each district subject to the provisions of TEC, Chapter 41, that exercises Option 4 must disclose to the commissioner any other contractual or financial arrangement between the district and its partner(s) or between the district and any other entity that directly benefits from the distribution of the gain. Any business transaction between the district subject to the provisions of TEC, Chapter 41, and other entities must be at a fair market price. A district subject to the provisions of TEC, Chapter 41, must be prepared to document that any product or service it provides as part of a financial arrangement with its partners has an open marketplace that can establish a fair market price, for example, through previous sales of the product or service to unrelated parties. A district subject to the provisions of TEC, Chapter 41, may not demand or negotiate a discounted purchase price from a partner district or other related entity for products or services provided to the district subject to the provisions of TEC, Chapter 41, that results in a lower price than would be paid by an unrelated party. A district subject to the provisions of TEC, Chapter 41, may not make an Option 4 partnership agreement subject to any separate financial agreement between the districts that is not contained in the TEC, Chapter 41, agreement.

(5) [~~(3)~~] For Options 3 and 4, the projected cost estimate provided by the commissioner to the district by February of the year serves as the basis for initial payments made to the state and/or partner(s). For Option 4, payments to the partner(s) must be made between February and August of the year but otherwise may adhere to a mutually acceptable schedule.

(6) [~~(4)~~] Unless a school district adopts the alternative method for calculating wealth per WADA in accordance with subsection (b) of this section, a school district subject to the provisions of wealth equalization that pays tuition to another district to educate its students may apply the cost of the tuition toward the cost of the option chosen to reduce wealth. The credit amount per student cannot be greater than the district's cost per WADA. Written documentation must be provided to the commissioner to verify the total tuition paid and the amount per student. The maximum tuition amount that may be charged by the receiving district and the state aid reduction as a result of the tuition charge is described in §61.1012 of this title (relating to Contracts and Tuition for Education Outside District).

(7) [~~(5)~~] For each school district subject to the provisions of wealth equalization, transitional state aid for professional staff salaries is computed in accordance with §105.1012 of this title (relating to Additional State Aid for Professional Staff Salaries). Any amount earned by a district is deducted as a credit against the amount owed to equalize wealth. If a credit exceeds an amount owed, the difference is paid to the district. An initial payment will be made as soon as the TEA has estimated an assistance amount. A final settle-up will be made during September of the following year.

(8) [~~(6)~~] Initially, the cost to equalize wealth is projected by the commissioner based on estimates of the district's WADA for TEC, Chapter 41, and expected tax collections. For districts exercising Option 3 or 4, the cost estimate may be updated by the commissioner periodically throughout the year.

(9) [~~(7)~~] For Options 3 and 4, the projected cost estimate provided by the commissioner to the district by February of the year serves as the basis for initial payments made to the state and/or partner(s). For Option 4, payments to the partner(s) must be made between February and August of the year but otherwise may adhere to a mutually acceptable schedule.

(10) [~~(8)~~] For Options 3 and 4, the final cost to equalize wealth is determined by the commissioner when audited tax collections and data elements for the calculation of WADA for TEC, Chapter 41, are final and available, after the close of business for the school year. The calculation of WADA for TEC, Chapter 41, incorporates final values for WADA for TEC, Chapter 42, and, when applicable, current-year data for the number of student transfers. The final WADA for TEC, Chapter 42, is based, in part, on attendance data submitted at year-end through the Public Education Information Management System (PEIMS). When applicable, student transfer data are obtained from the PEIMS fall submission. When applicable, final values for WADA for TEC, Chapter 42, and current-year fall PEIMS data for enrollment are used in the WADA-to-enrollment ratio that is applied to the number of transfers to calculate a corresponding WADA.

(11) [~~(9)~~] When final costs for the fiscal year are determined for Options 3 and 4, the payments are compared to the final cost. Districts that have not sufficiently reduced wealth must remedy the shortfall in accordance with the directives of the commissioner before the end of that fiscal year. Districts that have overpaid in the process of reducing their wealth level will receive either appropriate refunds from the state and/or partner district(s) or credits against future costs.

(e) Administrative requirements. Districts taking action to equalize wealth must abide by all fiscal, procedural, and administrative requirements [~~published yearly by the commissioner in a wealth equalization handbook including adherence to any adopted schedule and to the submission of forms and contracts~~].

(1) Unless other definitive action (such as submission of a contract) has already been taken by a district subject to the provisions of TEC, Chapter 41, the district must inform the TEA in writing of intended actions to equalize wealth. A "letter of intent" must be postmarked (or have some other postal carrier verification of date mailed) by September 1 of the applicable year.

(2) Pursuant to TEC, Chapter 41, Subchapters D and E, any contract submitted for Option 3 or 4 must be submitted to the TEA by certified mail through the U.S. Postal Service or other common postal carrier.

(3) Option 3 contracts must be postmarked by September 1 of each year in order to qualify for the early agreement credit. Option 4 [~~contracts~~] and [~~any~~] Option 3 contracts not incorporating efficiency credits or early agreement credits [~~the discount~~] must be postmarked by November 15. [~~a date specified in a schedule published each year by the commissioner in the wealth equalization handbook.~~] Option 4 contracts seeking efficiency credits must be postmarked by December 20.

(4) All contractual arrangements must be approved yearly by the commissioner, regardless of continuing or long-term arrangements between contracting parties.

(5) Contracts and forms submitted to the TEA that require signatures must be originals.

(6) All written correspondence pertaining to TEC, Chapter 41, including contracts and data forms, must be sent to the TEA division responsible for state funding. [~~an address published yearly by the commissioner in the wealth equalization handbook.~~]

(f)-(h) (No change.)

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

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203940
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Earliest possible date of adoption: August 4, 2002
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 175. FEES, PENALTIES, AND APPLICATIONS

22 TAC §175.1

The Texas State Board of Medical Examiners proposes an amendment to §175.1, concerning Fees. The amendment will increase the fee for physician assistant annual registration. The funds will be used to support the on-line registration project.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the section is in effect there will be fiscal implications to state or local government as a result of enforcing the rule as proposed. The fiscal impact follows: anticipated revenue to state - $5 x 2600 registrations = $13,000. Cost to those required to comply - $5 per year for each physician assistant.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be funding to support the on-line registration project. There will be no effect on small or micro businesses.

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

The amendment is proposed under the 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.

The following are affected by the proposed amendment: Tex. Occ. Code Ann., §153.051.

§175.1. Fees.

The board shall charge the following fees.

(1) Physicians:

(A) processing an application for licensure examination (includes a $200 surcharge and one jurisprudence examination sitting)--$800;

(B) Jurisprudence examination fees (required and payable each time applicant is scheduled for a repeat of examination)--$50;

(C) processing an application for a special purpose license for practice of medicine across state lines (includes a $200 surcharge and one jurisprudence examination sitting)--$800;

(D) temporary license:

(i) regular--$50;

(ii) distinguished professor--$50;

(iii) state health agency--$50;

(iv) rural/underserved areas--$50;

(v) continuing medical education--$55;

(E) annual registration permit (includes a $200 surcharge)--$334;

(F) duplicate wall certificate--$45;

(G) processing an application for reissuance of license following revocation (includes a $200 surcharge and one jurisprudence examination sitting)--$800;

(H) office-based anesthesia site registration--$300.

(2) Physicians in Training:

(A) institutional permit (began training program prior to 6-1-2000)--$45;

(B) postgraduate resident permit--$60;

(C) temporary postgraduate resident permit--$50;

(D) faculty temporary permit--$110;

(E) visiting professor permit--$110;

(F) evaluation or re-evaluation of postgraduate training program--$250.

(3) Physician Assistants:

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

(B) temporary license--$50;

(C) annual renewal--$155 [~~$150~~].

(4) Acupuncturists/Acudetox Specialists:

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

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

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

(D) acupuncturist distinguished professor--$50;

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

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

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

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

(5) Non-Certified Radiologic Technicians:

(A) processing an application--$50;

(B) annual renewal--$50.

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

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

(B) processing an application for biennial recertification--$1,000;

(C) fee for a late application for biennial recertification--$1,000.

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

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

TRD-200203829
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: August 4, 2002
For further information, please call: (512) 305-7016

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.14

The Texas State Board of Examiners of Psychologists proposes amendments to §463.14, concerning Written Examinations. The amendments are being proposed in order to set a passing rate on the Jurisprudence Examination that is appropriate to application for licensure as a psychological associate.

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

Ms. Lee 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 to make the rules easier for the licensees and public to follow and understand. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§463.14. Written Examinations.

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

(f) Cutoff Scores. The minimum acceptable score for the EPPP is seventy percent (70%) of questions scored for psychologist licensure applicants and fifty-five percent (55%) of questions scored for psychological associate licensure applicants on the pencil and paper version of the test. For computer-delivered EPPP examinations, the cutoff scaled scores are 500 and 450 respectively. Applicants for licensure as a psychological associate must receive a minimum

score of eighty percent (80%) of a questions scored on the Board's Jurisprudence Examination. All other applicants for licensure[~~, both doctoral and masters level,~~] must receive a minimum score of ninety percent (90%) of questions scored on the Board's Jurisprudence Examination. The exam score of applicants for licensure who have already taken the EPPP must satisfy the requirements of the Board as of the date of application to the Board.

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

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

TRD-200203858
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: August 4, 2002
For further information, please call: (512) 305-7700

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.1

The Texas State Board of Examiners of Psychologists proposes amendments to §465.1, concerning Definitions. The amendments are being proposed in order to clarify the correct term for forensic services and to provide clarifying language for other definitions. In addition, a superfluous definition is removed, insofar as it is contained in another Board rule.

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

Ms. Lee 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 to make the rules easier for the licensees and public to follow and understand. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§465.1. Definitions.

The following terms have the following meanings:

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

(3) "Forensic services [~~psychology~~]" is the provision of psychological services involving a court of law or the legal system. The provision of forensic psychological services includes any and all preliminary and exploratory services, testing, assessments, evaluations, interviews, examinations, depositions, oral or written reports, live or recorded testimony, or any psychological service provided by a licensee concerning a current or potential legal case at the request of a party or potential party, an attorney for a party, or a court, or any other individual or entity, regardless of whether the licensee ultimately provides a report or testimony that is utilized in a trial or hearing.

(4)-(8) (No change.)

(9) "Professional standards" are those standards determined by the Board through its rules, regulations, policies and any other sources adopted by the Board.

(10)-(12) (No change.)

[~~(13) "Sexual Relationship" has the definition set forth in §§465.33(c) of this title (relating to Improper Sexual Conduct).~~]

(13) [~~(14)~~] "Test data" refers to testing materials, test booklets, test forms, test protocols and answer sheets used in psychological testing to generate test results and test reports.

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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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

22 TAC §465.9

The Texas State Board of Examiners of Psychologists proposes amendments to §465.9, concerning Competency. The amendments are being proposed in order to clarify the duties of licensees when providing emergency psychological services.

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

Ms. Lee 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 to make the rules easier for the licensees and public to follow and understand. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§465.9. Competency.

(a)-(h) (No change.)

(i) Emergency Situations. In emergencies, when licensees are asked to provide services to individuals for whom appropriate mental health services are not available and for which the licensee has not obtained the necessary competence, licensees may provide such services only to the extent necessary to ensure that services are not denied. If ongoing services are provided, licensees must comply with Board rule §465.9(d) as soon as practicable or refer the patient as per Board rule §465.9(h).

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

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

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: August 4, 2002
For further information, please call: (512) 305-7700

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 517. FINANCIAL ASSISTANCE
SUBCHAPTER B. COST-SHARE ASSISTANCE FOR BRUSH CONTROL

The Texas State Soil and Water Conservation Board (TSSWCB) proposes the repeal of 31 TAC §517.30, and simultaneously proposes the amendments to §§517.23-517.28 to ensure the most efficient and effective implementation of the brush control cost-share program.

The repeal of §517.30 under the rule revisions the districts will not receive an allocation.

The proposed amendment removes language from §§517.23-517.28, and 517.30 regarding allocation of funds to soil and water conservation districts. Language is added to §517.25 regarding the state board allocating funds to watersheds for brush control projects where feasibility studies have been completed.

The proposed amendment also refines the responsibilities of the TSSWCB and SWCDs in §517.24 and §517.27 so that (1) SWCDs provide recommendations to TSSWCB on average costs, the sign up period and program guidelines, (2) the TSSWCB establishes average costs, the sign up period and program guidelines, and (3) SWCDs then administer the program according to the TSSWCB guidelines.

The proposed amendment adds language to §517.28 regarding follow up treatment only being required if funding is appropriated by the Legislature for such purpose.

These changes are needed to allow the brush control cost-share program to increase water yields most cost effectively.

James Moore, Deputy Executive Director, Texas State Soil and Water Conservation Board, has determined that for the first five-year period there will be no fiscal implications for state or local government as a result of administering the sections.

James Moore, Deputy Executive Director, Texas State Soil and Water Conservation Board, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be more effective implementation of the brush control program. There is no anticipated cost to small businesses or individuals resulting from this proposal.

Comments on the proposal may be submitted in writing to Robert G. Buckley, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, TX 76503, (254) 773-2250.

31 TAC §§517.23 - 517.28

The amendments are proposed under the Agriculture Code Title 7, Chapter 203, §203.012, which authorizes the State Soil and Water Conservation Board to adopt rules that are necessary to carry out the program and §203.011, which provides authorization for the Board to administer the brush control program.

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

§517.23. Definitions.
For the purposes of these rules the following definitions shall apply.

[~~(1) Allocated funds--Funds budgeted through the state board to an SWCD for cost-share assistance.~~]

(1) [~~(2)~~] Applicant--An eligible person who applies for a cost-share assistance from the SWCD.

(2) [~~(3)~~]Available funds--Monies budgeted, unobligated, and approved by the state board for cost-share assistance.

[~~(4) Basis for cost-sharing--Cost-share will be based on actual cost not to exceed the average cost.~~]

(3) [~~(5)~~] Brush Control--The managing and manipulating of stands of brush on rangeland, pastureland and recreation and wildlife areas by mechanical, chemical, or biological means or by prescribed burning.

(4) [~~(6)~~] Cost-share assistance--An award of money made to an eligible person for brush control pursuant to the purpose(s) for which the funds were appropriated.

(5) [~~(7)~~] Cost-share rate--The percent of the cost of brush control to be awarded an eligible person based on actual cost not to exceed average cost.

(6) [~~(8)~~] District director--A member of the governing board of an SWCD.

(7) [~~(9)~~] Eligible land--Those lands that are eligible for application of brush control using cost-share assistance.

(8) [~~(10)~~] Eligible person-- Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity eligible to apply for cost-share assistance that is a cooperator with the local soil and water conservation district. [~~Allocated funds shall not be used to reimburse other units of government for implementing conservation land treatment measures.~~]

(9) [~~(11)~~] Expected life of practice--The period of time established by the State Board for which a cost-shared practice must be

maintained. [~~When properly maintained the practice will remain effective beyond this period.~~]

(10) [~~(12)~~] Landowner--Any person(s), firm or corporation holding title to land lying within a watershed approved for project action.

(11) [~~(13)~~] Operator--Any person(s), firm or corporation with a contractual arrangement with the landowner that grants operational control of an agricultural enterprise.

(12) [~~(14)~~] Obligated funds--[~~Monies from an SWCD's allocated~~] Funds[~~funds~~] that have been committed to an applicant after final approval of the application by the SWCD, and approved by the State Board. [~~SWCD.~~]

(13) [~~(15)~~] Performance agreement -- A written agreement between the eligible person and the SWCD wherein the eligible person receiving the benefit of cost share assistance agrees, as a condition for receipt of cost share assistance, to perform the brush control in accordance with standards established by Texas State Soil and Water Conservation Board and the terms of the cost share agreement.

(14) [~~(16)~~] Priority system--The system devised and approved by [~~the SWCD, under guidelines of~~] the state board, for ranking brush control plans and for facilitating the disbursement of [~~allocated~~] funds [~~in line with the SWCD's priorities~~].

(15) [~~(17)~~] Program year--The period from September 1 to August 31.

(16) [~~(18)~~] Resource management plan--A site specific plan for implementation of soil and water conservation land improvement measures. It includes a record of the eligible person's decisions made during planning and the resource information needed for implementation and maintenance of the plan that has been reviewed and approved by the SWCD.

(17) [~~(19)~~] Soil and water conservation district, herein referred to as SWCD--A government subdivision of this state and a public body corporate and politic, organized pursuant to the Agriculture Code of Texas, Chapter 201.

(18) [~~(20)~~] State Board--The Texas State Soil and Water Conservation Board organized pursuant to the provisions of the Agriculture Code of Texas, Chapter 201.

§517.24. Responsibilities.

(a) The state board shall:

(1) establish procedures for the allocation of funds [~~to SWCDs~~] for their use in cost-share assistance;

(2) establish brush control methods eligible for cost-share and their standards, specifications, maintenance, and expected life;

(3) establish maximum cost-share rate for each conservation land treatment measure approved for cost-share, not to exceed maximums established by enabling legislation;

(4) establish [~~approve~~] average costs based on recommendations provided [~~developed~~] annually by SWCDs;

(5) establish the maximum cost-share assistance that an eligible person may receive under the program in any one year, and the lifetime maximum cost-share assistance that an eligible person may receive;

(6) perform clerical, administrative, and record keeping responsibilities required for carrying out the cost-share program;

[~~(7) receive and maintain monthly reports from SWCDs showing the unobligated balance of allocated funds as shown on each ledger at the close of the last day of each month;~~]

[~~(8) receive requests for reallocated funds and funds reverted from participating SWCDs;~~]

(7) [~~(9)~~] act on appeals filed by applicants;

(8) [~~(10)~~] process vouchers and issue warrants for cost-share to eligible recipients.

(9) maintain reports showing the unobligated balance of funds as shown on each ledger at the close of the last day of each month.

(b) The SWCDs shall:

(1) designate, from state board approved [~~list, those~~] brush control methods those that will be eligible for cost-share in their SWCD;

(2) recommend [~~establish~~] district maximum cost-share rates for consideration [~~not to exceed maximum set~~] by the State Board;

(3) develop annually district average cost for each practice on the district's approved practice list;

[~~(4) establish annually the maximum amount of cost-share available to each applicant not to exceed the maximum set by the State Board;~~]

(4) [~~(5)~~] administer the cost-share program within the district under guidelines established [~~funds allocated~~] by the state board;

(5) [~~(6)~~] utilize [~~establish, under guidelines of~~] the state board, the priority system [~~to be used~~] for evaluation of applications;

(6) [~~(7)~~] provide recommendations to the state board on [~~establish~~] the period(s) of time for accepting applications [~~and announce the cost-share program locally~~];

(7) announce the cost-share program locally;

(8) accept and process cost-share applications;

(9) determine eligibility of lands and persons for cost-share assistance under guidelines established by the state board;

(10) notify applicants of the district's decisions on approval of applications;

(11) file [~~original~~] copy of approved applications in the district's copy of the applicant's resource management plan;

[~~(12) obligate allocated funds for applications receiving final approval;~~]

(12) [~~(13)~~] provide or arrange for technical assistance to applicants, or approve application and provide for an alternate source of technical assistance;

(13) [~~(14)~~] certify to the state board that conservation land treatment measures have been completed according to standards and specifications prior to payment;

(14) [~~(15)~~] submit required program reports [~~on the unbligated balance of allocated funds and~~] on accomplishments to the state board.

§517.25. Administration of Funds.

[~~(a)~~] Allocation of funds. The state board may allocate funds appropriated from general revenue fund [~~to SWCDs~~] for brush control projects where feasibility studies have been completed. Priority is

determined based on water needs and cost effectiveness. Such allocations may be adjusted throughout the year as available funds and project [SWCD] needs and priorities change in order to achieve the most efficient use of state funds.

[(b) Requests for allocations. SWCDs within areas designated for brush control cost-share must submit written requests for a cost-share fund allocation to the state board and shall include average costs of brush control and maximum allowable cost-share per individual approved by the district for the program year.]

[(c) Approval of allocations. The state board shall consider and approve, reject, or adjust SWCD requests for allocations giving consideration to relative need for funding, SWCD workload and fund balances, as well as other information deemed necessary by the state board. Only districts for which the state board has established an allocation are eligible to claim cost-share funds.]

§517.26. Eligibility for Cost-share Assistance.

(a) Eligible person. Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who as an owner, lessee, tenant, or sharecropper participates in an agricultural or silvicultural operation within an SWCD and is a cooperator with the local SWCD shall be eligible for cost-share assistance.

(b) Eligible land. Any of the following categories of land shall be eligible for cost-share assistance:

(1) land within the state that is privately owned by an eligible person;

(2) land leased by an eligible person over which he has adequate control and which land is utilized as a part of his operating unit;

(3) land owned by the state, a political subdivision of the state, or a nonprofit organization that holds land in trust for the state.

(c) Ineligible lands. Funds [Allocated funds] shall not be used on privately owned land not used for agricultural or silvicultural production.

(d) Eligible purposes. Cost-share assistance shall be available only for brush control included in an approved resource management plan and determined to be needed [by the SWCD] to improve water [quality and/or] quantity.

(e) Eligible practices. Brush control methods which the state board has approved and which are included in the applicant's approved resource management plan shall be eligible for cost-share assistance. The SWCDs shall designate their list of eligible methods from those approved by the state board.

(f) Requirement to file an application. In order to qualify for cost-share assistance, an eligible person shall file an application with the local soil and water conservation district.

(g) Persons authorized to sign applications and agreements. All agreements, applications and performance reports shall be signed by:

(1) the eligible person;

(2) any person designated to represent the eligible person, provided an appropriate notarized durable power of attorney has been filed with the SWCD office; or

(3) the responsible person or administrator, in cases of trusts or estates, provided that letters of administration or letters of testamentary have been submitted to the SWCD in lieu of a power of attorney.

§517.27. Cost-share Assistance Processing Procedures.

(a) (No change.)

(b) Responsibilities of SWCDs. SWCDs shall:

(1) approve resource management plans;

(2) provide recommendations to the state board on [establish] the period(s) of time for accepting applications [and announce the cost-share program locally;]

(3) announce the cost-share program locally;

(4) [(3)] accept cost-share applications at the SWCD's office;

(5) [(4)] determine eligibility of lands and persons for cost-share assistance. If an applicant's land is in more than one SWCD, the respective SWCD boards of directors will review the application and agree to oversee all works, administrate all contracts and obligate all funds from one SWCD or prorate the funding between SWCDs;

(6) [(5)] give initial approval to those applications that meet the eligibility requirements;

(7) [(6)] evaluate the initially approved applications under the [SWCD's] priority system and give final approval to the high priority applications that can be funded with available [by the SWCD's allocated] funds;

(8) [(7)] obligate funds for the approved brush control that can be funded and notify the applicants that his/her application has been approved for cost-share and to proceed with implementation as outlined in the applicant's plan;

(9) [(8)] determine compliance with standards and specifications and certify completed brush control that meet standards.

(c) Amended applications for [allocated] funds.

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

(d) (No change.)

(e) Payment to recipients.

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

(3) Partial payment can be requested for brush control methods completed on identifiable land units [or components of approved brush control methods] as they are completed, provided required management can be applied.

(f) Applications held in abeyance because of lack of funds. In those cases where funds are not available, the applications will be held by the SWCD until [allocated] funds become available or until the end of the program year. When additional funds are received, the SWCD will obligate those funds. The SWCD may shift all unfunded applications held in abeyance because of lack of funds that are on hand at the end of a program to the new program year or require all new applications as it deems appropriate.

(g)-(h) (No change.)

(i) Appeals.

(1) An applicant may appeal the SWCD decisions relative to his/her application for cost-share [allocated] funds.

(2) The applicant shall make any appeal in writing to the SWCD which received his/her application for [allocated] funds and shall set forth the basis for the appeal.

(3)-(6) (No change.)

§517.28. Management of Areas Treated for Brush Control.

(a) Requirements for follow up treatment for brush control applied using cost-share funds will be included in the application for cost share with management recommendations outlined in the eligible person's resource management plan. These will be reviewed with the eligible person at the time of application for cost-share. Follow up treatments will be required only if funding is appropriated by the Legislature for such purposes.

(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 June 20, 2002.

TRD-200203881
Robert G. Buckley
Executive Director
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: August 4, 2002
For further information, please call: (254) 773-2250

31 TAC §517.30

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

The repeal is proposed under Chapter 201.020 Agriculture Code which provides the Texas State Soil and Water Conservation Board with the authority to adopt rules as necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles or codes are affected by this repeal.

§517.30. Reporting and Accounting.

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

Filed with the Office of the Secretary of State on June 20, 2002.

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Robert G. Buckley
Executive Director
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: August 4, 2002
For further information, please call: (254) 773-2250

TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 190. ALLOCATION OF STATE'S LIMIT ON CERTAIN PRIVATE ACTIVITY BONDS

SUBCHAPTER A. PROGRAM RULES

34 TAC §§190.2, 190.3, 190.5, 190.8

The Texas Bond Review Board proposes amendments to §§190.2, 190.3, 190.5, 190.8. The program rules are amended to comply with changes in Chapter 1372, Government Code, as amended. Generally, the amendments will allow more applications to receive a reservation and clarify procedures.

James T. Buie, Executive Director of the Bond Review Board, has determined that for each year of the first five years that the amended and added sections are in effect, there will be negligible fiscal implications for state and local government as a result of enforcing or administering the amended sections.

James T. Buie, Executive Director of the Bond Review Board, has also determined that for each year of the first five years the amended sections are in effect, the public benefits anticipated as a result of enforcing the amended sections will be an increase in the number of applicants receiving a reservation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments may be submitted to James T. Buie, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292.

The amended sections are proposed Chapter 1372, Government Code, as amended, which gives the Texas Bond Review Board the authority to adopt rules governing the implementation and administration of the allocation of the state's ceiling on private activity bonds.

Chapter 1372, Government Code is affected by this proposed amendment.

§190.2. Allocation and Reservation System.

(a) (No change.)

(b) On or after October 10 of the year preceding the applicable program year, the board will accept applications for reservation from issuers authorized to issue private activity bonds. The board shall not grant a reservation to any issuer prior to January 2 of the program year. If two or more issuers file an application for reservation of the state ceiling in any of the categories described in §1372.022, the board shall conduct a lottery establishing the priority order of each such application for reservation. Once the priority order for all applications for reservation filed on or before October 20 of the year preceding the applicable program year is established, reservations for each issuer within the categories described in §1372.022 (b)(2), (3), and (6), shall be granted in the order of priority established by such lottery. [~~Each issuer of state voted issues granted a reservation initially shall be granted a reservation date which is the first business day of the program year.~~] If more than 10 applications by issuers, other than issuers of state voted issues, are granted a reservation initially, an additional lottery will be held immediately to determine staggered reservation dates for such issuers. Each issuer of state voted issues granted a reservation initially may participate in the additional lottery or shall be granted a reservation date which is the first business day of the program year.

(c) The order of priority for reservations by housing finance corporations in the category described in §1372.022(b)(1), Government Code, shall further be determined as provided in §1372.032.

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

(3) Within each category of priority, reservations shall be granted in reverse calendar year order of the most recent closing of qualified mortgage bonds by each housing finance corporation, with the most recent closing being the last to receive a reservation and with those housing finance corporations that have never received a reservation for mortgage revenue bonds being the first to receive a reservation, and, in

the case of closings occurring on the same date, reservations shall be granted in an order determined by the board by lot. The most recent closing applicable to:

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

(C) all other housing finance corporations, is the most recent closing of qualified mortgage bonds by the housing finance corporation. In no event will a housing finance corporation or its sponsoring local government unit be allowed to achieve an advantage in the determination of its last closing date by creating, dissolving, or withdrawing [or disbanding] from a housing finance corporation.

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

(g) If any issuer which was subject to the lottery conducted as described in subsection (b) of this section does not, prior to September 1 of the program year, receive the amount requested by such issuer in its application for reservation filed on or before October 20 of the preceding year, and if state ceiling becomes available on or after September 1 of the program year, such issuer, subject to the provisions of §1372.037, Government Code, shall receive a reservation for any state ceiling becoming available on or after September 1 of the program year, in the order of priority established by such lottery, without regard to the provisions of §§1372.032, 1372.0321, and [§]1372.033, Government Code.

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

(k) The amount of the state's ceiling that has not been reserved prior to December 1 of the program year and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation or any other reason, may be designated, by the board, as carryforward for the carryforward purposes outlined in the Code through submission of the application for carryforward and any other required documentation. If the 120-day or 180-day period, as applicable, expires on or after December 24th of a program year in which a reservation was issued, an issuer is required to close on its bonds before December 24th. However, if an issuer's applicable period expires after December 31st, the issuer may elect to notify the board in writing before December 24th of their intent to carry forward the reservation and their expected bond closing date. The granting by the board of a carryforward designation through this described process, will allow an issuer the remaining balance of their 120- or 180-day period as applicable to close on their bond by the expected closing date. If any issuer makes this election and does not close the bonds on or before the expected closing date, the amount of carryforward designation will be administered by the board in compliance with the requirements of the code [added to the current private activity program year by the category of bonds in which the election was made. Once available, the carryforward volume cap will be reserved within the appropriate category before any other cap within that category is reserved].

(l) (No change.)

(m) Issuers will be eligible for carryforward according to the priority classifications listed in the Act, specifically §1372.062[(b) and §1372.042(c)].

§190.3. Filing Requirements for Applications for Reservation.

(a) (No change.)

(b) Application Filing. The issuer shall submit one original and one copy of the application for reservation. Each application must be accompanied by the following:

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

(3) a copy of the inducement resolution or other similar official action taken by the issuer with respect to the bonds and the project which are the subject of the application, certified by an officer of the issuer; or a copy of the certified resolution of the issuer authorizing the filing of the application for reservation, in either case certified with an original signature by an officer of the issuer. If bond counsel is the acting authorized representative of the issuer, bond counsel must be identified as such by issuer resolution;

(4) a copy of the issuer's articles of incorporation as certified by the secretary of state of Texas and by-laws, including amendments thereto and restatements thereof, or alternatively, a certification with an original signature by an authorized representative of the issuer that there have been no amendments to the articles of incorporation or by-laws since the last submission of these items to the board;

(5) a copy of the issuer's certificate of continued existence from the secretary of state of Texas dated within 30 days of submission of application, an issuer's certificate of good standing is not an acceptable substitution for this requirement;

(6)-(8) (No change.)

(9) if unexpended proceeds, including transferred proceeds representing unexpended proceeds, other than prepayments exist from a prior issue or issues of bonds, other than a state-voted issue or an issue by TDHCA, or TAFA, issued by the issuer or on behalf of the issuer, or based on the issuer's population, for the same stated purpose for which the bonds are the subject of this application, a definite and binding financial commitment agreement must accompany the application in such form as the board finds acceptable, to expend the unexpended proceeds by the later of 12 months after the date of receipt by the board of an application for reservation or December 31 of the program year for which the application is being filed. For purposes of this paragraph, the commitment by lenders to originate and close loans within a certain period of time shall be deemed a definite and binding agreement to expend bond proceeds within such period of time and any additional period of time during which such origination period may be extended under the terms of such agreement; provided that any extension provision may be amended, prior to the date on which the bond authorization requirements described in subsection (c) of this section must be satisfied, to provide that such period shall not be extended beyond the later of 12 months after the date of receipt by the board of an application for reservation or December 31 of the program year for which the application is being filed. For purposes of this paragraph, issuers of qualified student loan bonds authorized by §53.47, Education Code, may satisfy the requirements of §1372.028(c)(3)(F)[(f)] by, in lieu of a definite and binding agreement, providing with the application evidence as certified by the issuer that the issuer has purchased, in each of the last three calendar years, qualified student loans in amounts greater than or equal to the amount of the unexpended proceeds;

(10)-(11) (No change.)

(12) a qualified mortgage bond issuer that submits an application for reservation as described in §1372.032, Government Code, shall provide a statement certifying to the most recent closing of qualified mortgage bonds determined as provided in §190.2(c)(3) of this title, and the most recent date of a reservation received for mortgage revenue bonds and state the government unit(s) for which the local population was based for the issuance of bonds or for receipt of a reservation; and for said issuers who have received an allocation of volume cap for the purposes of issuing qualified mortgage bonds within the six years prior to the date of application, a statement on the form prescribed by the Board as to the utilization percentage relating to its most recent allocation calculated in accordance with §1372.0261;

(13) (No change.)

(14) bond counsel must be specified in the application for reservation of allocation; issuer's counsel is not an acceptable substitute;

(15) The borrower must be specified in the application for reservation of allocation. The borrower may be identified as a to-be-formed entity only if the application for reservation of allocation specifies a related entity or an entity that will be a component of the to-be-formed entity as borrower and clearly provides for the substitution of such to-be-formed entity as the borrower;

(16) For qualified residential rental project issues where the borrower is an entity or to-be-formed entity that is designated or intends to seek designation as a Community Housing Development Organization (CHDO) for the purpose of seeking property tax abatement, that designation or intent to seek designation must be specified on Application for Reservation of Allocation.

(c) Bond authorization requirements. Not later than 35 calendar days after an issue's reservation date, the [~~issuer shall submit to the~~] board or Comptroller of Public Accounts, as applicable, must be in receipt of the following from the issuer:

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

(5) if applicable, an amended agreement pursuant to subsection (b)(9)[~~(8)~~] of this section;

(6) (No change.)

(7) if the borrower was originally identified as a to-be-formed entity, the final formation of the borrower must be identified as part of the submission and must meet the specifications set forth in the application for reservation of allocation. No changes will be permitted in the Borrower after the 35th day after the date of reservation.

(d) Closing fee. The remaining two-thirds of the fee must be paid simultaneously with closing on the bonds. The [~~issuer should submit the fee to the~~] board shall be in receipt of the fee from the issuer as confirmed by the Comptroller of Public Accounts not later than the fifth business day after the day on which the bonds are closed.

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

(g) Application restrictions.

(1) (No change.)

(2) Project substitutions will not be allowed after the application for reservation has been delivered to the board, except to change the unit mix of residential rental projects if determined necessary by the applicant upon receipt of a market analysis or upon acceptance of a partial reservation.

(3)-(5) (No change.)

(6) For a qualified residential rental project issue, the Residential Rental Attachment contained in the Application packet for Reservation of Allocation must correctly reflect the regional designation of the project's location at the time of the lottery. If it is found to be incorrect on or after the lottery date, the project will be disqualified.

(7) For a qualified residential rental project, an applicant may amend the priority status down to a lower priority from a higher priority only if done before January 1 of each program year by submitting a letter to the Bond Review Board explaining the change, with an amendment attached. An applicant may not ever amend the priority status of a residential rental project to a higher priority once the application has been submitted to the Board.

(8) Qualified residential rental projects submitted post-lottery will be placed after all qualified residential rental projects submitted prior to the lottery, regardless of priority designation.

§190.5. Consideration of Qualified Applications by the Board.

(a) All fees required by the Act and the rules must be submitted under separate cover by overnight delivery or messenger to the lockbox address as described in §190.8(c) of this title (relating to Notices, Filings, and Submissions). Each check must be accompanied by a fee verification form as prescribed by the board. The Comptroller of Public Accounts shall note the receipt of the check on the fee verification form and forward the form to the board. [~~All checks must be received by the Comptroller of Public Accounts within 24 hours of the receipt of corresponding documents by the board.~~] If the fee is not received in a timely manner, the corresponding filing will not be considered to be a complete filing, and with respect to a filing pursuant to §190.3(a) or (c) of this title (relating to Filing Requirements for Applications for Reservation), the reservation will be cancelled.

(b)-(e) (No change.)

(f) If at any time none of the state's ceiling remains available for certificates of reservation in a specific category, but additional amounts become available in such specific category before June 1 of the program year because of cancellations or any other reason, those amounts shall be aggregated and reservations shall be granted from that category on June 1 of the program year to qualified applications in an order determined by priority and by lot number with respect to those applications having such numbers, and otherwise by date and time of receipt by the board. If any portion of state ceiling becomes available after June 1 of the program year and before August 15 [~~25~~] of the program year in any specific category those amounts shall be aggregated and reservations shall be granted from that category on August 15[~~25~~] of the program year to qualified applications in an order determined by lot number with respect to those applications having such numbers, and otherwise by date and time of receipt by the board. The board may grant a reservation at any time on or after January 2 if the amount of state ceiling available in any category exceeds the amount of state ceiling applied for in that category by the next applicant.

(g)-(i) (No change.)

§190.8. Notices, filings, and Submissions.

(a) [~~Certificates of reservation and other notices and written communications from the board shall be deemed to have been given when duly deposited in the United States Mail, first class with all postage prepaid.~~] Certificates of reservation may, at the request of the borrower, be picked up by hand or delivered by courier or other delivery service, in any case at the expense of the borrower or issuer and shall be deemed to have been given when received by the courier or delivery service. Other notices and written communications from the board shall be deemed to have been given when sent via electronic mail.

(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 June 20, 2002.

TRD-200203879

Jim Buie

Executive Director

Texas Bond Review Board

Earliest possible date of adoption: August 4, 2002

For further information, please call: (512) 463-9890

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 12. SPECIAL NUTRITION PROGRAMS

SUBCHAPTER A. CHILD AND ADULT CARE FOOD PROGRAM

40 TAC §12.24

The Texas Department of Human Services (DHS) proposes to amend §12.24, concerning sanctions and penalties, in its Special Nutrition Programs chapter. The purpose of the amendment is to modify current rules for taking adverse action against Child and Adult Care Food Program (CACFP) day care home sponsors. The amendment requires DHS to give CACFP day care home contractors advance notification that DHS intends to terminate their contract when DHS determines during the first follow-up review that the contractor has not corrected all instances of program noncompliance identified in the initial review. The amendment also removes the provision for DHS to suspend contractors' administrative payments and deny payment of contractors' outstanding claims when DHS determines during the first follow-up review that the contractor has not corrected all instances of program noncompliance identified in the initial review. Additionally, the amendment makes technical and other non-substantive improvements to the rule language.

James R. Hine, Commissioner, 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.

Mr. Hine also has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be improved administration of the CACFP. Specifically, the rights of contractors subject to adverse action will be improved by giving the contractors advance notice when their contracts are subject to termination and allowing them due process. There will be no effect on small or micro businesses as a result of enforcing or administering the section, because the providers affected by this amendment are nonprofit or governmental entities and therefore not small or micro businesses. The economic effects are identical for all businesses, regardless of size. 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 Karen Van Reenen at (512) 420-2581 in DHS's Special Nutrition Programs. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-235, 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, DHS has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, DHS is not required to complete a takings impact assessment regarding these rules.

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

The amendment implements the Human Resources Code, §§22.001-22.036 and §§33.001-33.027.

§12.24. Sanctions and Penalties.

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

[~~(c) If DHS has evidence that a contractor has submitted false information, DHS will immediately suspend all program payments, including advance payments, until DHS can determine whether the contractor knowingly submitted false information. If DHS determines, after a review of information provided by the contractor or other sources, that the contractor has knowingly submitted false information, DHS will immediately declare the contractor seriously deficient; terminate the contractor's agreement, in whole or in part, in accordance with §12.25 of this title (relating to Denials and Terminations); suspend payment of any unpaid claim for reimbursement; and notify the contractor's eligible providers that they may transfer to another approved sponsor.~~]

(c) [~~(d)~~] If a contractor fails to attend training designated by DHS as mandatory, DHS requires [~~will require~~] the contractor to take corrective action to comply with program requirements. Failure by the contractor to accomplish the corrective action by the date established by DHS will result in adverse action up to, and including, termination of the contractor's agreement, in whole or in part, in accordance with §12.25 of this title (relating to Denials and Terminations) and recommendation for placement on the United States Department of Agriculture's (USDA's) National Disqualified List. If the contractor is a sponsoring organization, DHS will notify the contractor's eligible providers or centers that they may transfer to another approved sponsor.

(d) [~~(e)~~] DHS imposes sanctions against contractors that sponsor day care homes who fail to comply with program requirements for monitoring[~~,~~] and who fail to train providers. When [~~when~~] program violations related to monitoring or training of providers identified during an administrative review exceed a tolerance level of one provider or 10% of the providers sampled, whichever amount is greater,[~~.~~] DHS imposes sanctions according to the following procedure:

(1) If DHS determines during an initial review of the sponsor for the contract year that the sponsor has not complied with the requirements in this subsection, DHS will deny administrative reimbursements for the test month of the review for any provider who was not monitored or trained according to program requirements, and require the contractor to submit a plan describing how the program noncompliance will be corrected.

(2) DHS will conduct a follow-up review not later than 90 days after notifying the contractor of the review findings to determine if the sponsor is in compliance with the requirements in this subsection. If DHS determines during the follow-up review that the sponsor has not corrected all instances of program noncompliance identified in the initial review, DHS imposes [~~will impose~~] sanctions, including denial of administrative reimbursements for the months subsequent to the month of the initial review through the month of the follow-up review for any provider who was not monitored or trained according to program requirements, establishing a cap on the number of day care home providers the contractor may sponsor, not to exceed the number of day care homes sponsored at the time of the review, and rescinding and/or denying approval for advance payments[~~, and suspending all administrative reimbursements. DHS will continue to reimburse sponsors~~

to pay providers for meals served to children]. DHS also notifies the contractor that, if the contractor fails to demonstrate at the second follow-up review that all serious deficiencies identified by DHS have been or will be corrected, then DHS will:

(A) terminate the contractor's agreement, in whole or in part, in accordance with §12.25 of this title (relating to Denials and Terminations);

(B) declare the organization seriously deficient in its administration of the program;

(C) release the contractor's eligible providers to transfer to another approved sponsor; and

(D) debar individuals responsible for the deficiencies.

(3) DHS will conduct a second follow-up review not later than 45 days after notifying the contractor of the findings of the initial follow-up review to determine if the sponsor is in compliance with the requirements in this subsection. If the contractor fails to demonstrate at the second follow-up review that all serious deficiencies identified by DHS have been or will be corrected, DHS will notify the contractor that as a result of failure to correct all instances of noncompliance with the requirements for monitoring and training providers: [in this subsection will result in the termination of]

(A) the contractor's agreement is terminated, in whole or in part, in accordance with §12.25 of this title (relating to Denials and Terminations);[,]

(B) [declaration that] the organization is seriously deficient in its administration of the program;[,]

(C) [forfeiture of any outstanding claims for reimbursement, release of] the contractor's eligible providers will be released to transfer to another approved sponsor;[,] and

(D) [that] individuals responsible for the deficiencies are [will be] debarred.

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

(1) If DHS determines during an initial review of the sponsor for the contract year that the sponsor has failed to ensure that claims are submitted only for eligible meals served to eligible children, DHS imposes [will impose] sanctions, including denial of administrative reimbursements for any day care home provider who does not have eligibility or enrollment forms containing required information and requiring the contractor to submit an amended claim for reimbursement to remove all ineligible meals for the test month, and a plan describing how the program noncompliance will be corrected.

(2) If 10% or more of the meals sampled and claimed for reimbursement for the test month of the initial review fail to meet program requirements, DHS conducts [will conduct] a follow-up review not later than 90 days after notifying the contractor of the review findings to determine if the sponsor is in compliance with requirements for ensuring claims are submitted only for eligible meals served to eligible children.

(A) If DHS determines during the follow-up review that 10% or more of the meals sampled and claimed for reimbursement for the test month of the follow-up review fail to meet program requirements, DHS imposes [will impose] additional sanctions to include the months subsequent to the month of the initial review through the month of the follow-up review, including denial of administrative reimbursements for any day care home provider who does not have eligibility or enrollment forms containing required information, establishing a cap on the number of day care home providers the contractor may sponsor, not to exceed the number of day care homes sponsored at the time of the review, and rescinding and/or denying approval for advance payments[, and suspending all administrative reimbursements. DHS will continue to reimburse sponsors for meals served to children]. DHS also notifies the contractor that, if the contractor fails to demonstrate at the second follow-up review that all serious deficiencies identified by DHS have been or will be corrected, then DHS will:

(i) terminate the contractor's agreement, in whole or in part, in accordance with §12.25 of the title (relating to Denials and Terminations);

(ii) declare the organization seriously deficient in its administration of the program;

(iii) release the contractor's eligible providers to transfer to another sponsor; and

(iv) debar the individuals responsible for the deficiencies.

(B) If less than 10% of all meals claimed for the test month of the follow-up review are ineligible, the sponsor may not claim reimbursement for any ineligible meals for the test month, may not receive administrative reimbursement for any day care home provider who does not have eligibility or enrollment forms containing the required information, and must submit a plan describing how the program noncompliance will be corrected.

(3) If more than 10% of the meals sampled for the test month of the follow-up review fail to meet program requirements, DHS conducts [will conduct] a second follow-up review not later than 45 days after notifying the contractor of the findings of the initial follow-up review to determine if the sponsor is in compliance with requirements for ensuring claims are submitted only for eligible meals served to eligible children. If the contractor fails to demonstrate at the second follow-up review that all serious deficiencies identified by DHS have been or will be corrected, DHS notifies [will notify] the contractor that as a result of failure to correct all instances of noncompliance with requirements for ensuring claims are submitted only for eligible meals served to eligible children: [will result in the termination of]

(A) the contractor's agreement is terminated, in whole or in part, in accordance with §12.25 of this title (relating to Denials and Terminations);[,]

(B) [declaration that] the organization is seriously deficient in its administration of the program;[,]

(C) [forfeiture of any outstanding claims for reimbursement, release of] the contractor's eligible providers will be released to transfer to another approved sponsor;[,] and

(D) [that] individuals responsible for the deficiencies are [will be] debarred.

(f) [(g)] DHS imposes sanctions against contractors that sponsor day care homes who fail to disburse program funds to providers in accordance with program requirements when program violations related to the disbursement of program funds to providers identified during an administrative review exceed a tolerance level of one provider or 10% of the providers sampled, whichever amount is greater. DHS imposes sanctions according to the following procedure:

(1) If DHS determines during an initial review of the sponsor for the contract year that the sponsor has not complied with the requirements identified in this subsection, DHS imposes [will impose]

sanctions for the test month of the review, including requiring the contractor to submit an amended claim to remove, for the purpose of determining administrative reimbursement, all providers who have not been issued program funds according to program requirements (day care home provider's meal reimbursement will not be recouped) from its reimbursement claim for the test month. DHS will require the contractor to submit a plan describing how the program noncompliance will be corrected.

(2) DHS will conduct a follow-up review not later than 90 days after notifying the contractor of the review findings to determine if the sponsor is in compliance with the requirements identified in this subsection. If DHS determines during the follow-up review that the sponsor has not corrected all instances of program noncompliance identified in the initial review, DHS will extend the sanctions to include the months subsequent to the month of the initial review through the month of the follow-up review and establish a cap on the number of day care home providers the contractor may sponsor, not to exceed the number of day care homes sponsored at the time of the review, and rescinding and/or denying approval for advance payments. DHS also notifies the contractor that, if the contractor fails to demonstrate at the second follow-up review that all serious deficiencies identified by DHS have been or will be corrected, then DHS will:

(A) terminate the contractor's agreement, in whole or in part, in accordance with §12.25 of this title (relating to Denials and Terminations);

(B) declare the organization seriously deficient in its administration of the program;

(C) release the contractor's eligible providers to transfer to another approved sponsor; and

(D) debar individuals responsible for the deficiencies.

(3) DHS will conduct a second follow-up review not later than 45 days after notifying the contractor of the findings of the initial follow-up review to determine if the sponsor is in compliance with the requirements [~~identified~~] in this subsection [~~(h) of this section~~]. If the contractor fails to demonstrate at the second follow-up review that all serious deficiencies identified by DHS have been or will be corrected, DHS notifies [~~will notify~~] the contractor that as a result of failure to correct all instances of noncompliance relating to the disbursement of provider funds: [~~will result in the termination of~~]

(A) the contractor's agreement is terminated, in whole or in part, in accordance with §12.25 of this title (relating to Denials and Terminations);[~~,~~]

(B) [~~declaration that~~] the organization is seriously deficient in its administration of the program;[~~,~~]

(C) [~~forfeiture of any outstanding claims for reimbursement, release of~~] the contractor's eligible providers will be released to transfer to another approved sponsor;[~~,~~] and

(D) [~~that~~] individuals responsible for the deficiencies are [~~will be~~] debarred.

(g) [~~(h)~~] If, during a review or an audit, DHS cites a day home sponsoring organization for deficiencies in administrative or financial capabilities because of an excessive number of day home providers, DHS places a cap on the number of day home providers the organization may sponsor. DHS identifies the number of day home providers the sponsoring organization can properly administer and immediately notifies the sponsor. The sponsor has 10 days to submit a plan to DHS to reduce the number of day home providers to the level of the approved cap.

(h) [~~(i)~~] DHS approves no additional day home providers for day home sponsoring organizations identified through audit or review as deficient in program operations until the sponsoring organization submits to DHS an acceptable plan to correct the deficiency.

[~~(j) DHS suspends payments to day home sponsoring organizations submitting repeated amended claims until the sponsoring organization demonstrates that it can produce a final claim on time each month, unless the sponsoring organization can demonstrate good cause beyond its control for submitting the amended claims. DHS ensures that no future adjustments in claims are paid beyond the claiming time frames, except when justified by on-site DHS/USDA reviews or independent audits.~~]

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

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

(A) DHS notifies each contractor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in the termination of the contractor's agreement, in whole or in part, in accordance with §12.25 of this title (relating to Denials and Terminations), and recovery of overpayments as identified through audit findings.

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

(i) DHS issues the first notice by regular mail six months after the end of the contractor's fiscal year for which the audit is due.

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

(I) DHS must receive the audit on or before the due date specified in the notice;

(II) if DHS does not receive the audit on or before the specified due date, DHS will terminate the contractor's agreement, in whole or in part, in accordance with §12.25 of this title (relating to Denials and Terminations); and

(III) the contractor has the right to appeal this decision.

(C) If DHS does not receive the audit on or before the specified due date, DHS notifies the contractor by certified and regular mail of its intent to terminate the contractor's agreement, in whole or in part, in accordance with §12.25 of this title (relating to Denials and Terminations).

(2) If DHS determines [~~has determined~~] there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.

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

not granted an extension of the due date, DHS notifies the contractor by certified and regular mail that:

(A) the contractor failed to provide an acceptable audit within the specified time frames;

(B) DHS must receive an acceptable audit by the due date specified in this notification;

(C) if DHS does not receive an acceptable audit by the specified due date, DHS intends to terminate their agreement, in whole or in part, in accordance with §12.25 of this title (relating to Denials and Terminations); and

(D) the contractor has the right to appeal this decision. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.

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

(A) the contractor failed to provide an acceptable audit by the specified due date; and

(B) DHS intends to terminate their agreement, in whole or in part, in accordance with §12.25 of this title (relating to Denials and Terminations).

(5) Once a contractor's participation in the CACFP has been terminated for failure to submit an acceptable audit, the contractor must provide an acceptable audit for any outstanding audit year(s) and comply with the requirements of the Single Audit Act, as amended, in order to be eligible to participate in the Special Nutrition Programs.

(j) [~~(l)~~] If a sponsoring organization of day homes determines during a monitoring review, or by other means, that a provider has failed to comply with program requirements, the sponsor must execute a corrective action plan to achieve compliance. If a sponsoring organization conducts two or more unannounced monitoring reviews in any 12-month period during which the sponsor cannot confirm that children are enrolled for child care and participating in the program, the sponsor must execute a corrective action plan to ensure they are able to effectively monitor the provider's participation in the program. Exception: A sponsor may suspend the participation of a day care home provider without a corrective action plan if the safety of the children in care is at risk. The corrective action plan must notify the provider that failure to correct serious deficiencies will result in the termination of the provider's agreement and placement of the provider on USDA's National Disqualified List and specify:

(1) the serious deficiencies;

(2) the actions to be taken by the sponsor and the provider to achieve compliance; and

(3) the date by which corrective action must be completed.

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

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203918
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: August 4, 2002
For further information, please call: (512) 438-3734

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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Department of Human Services (DHS) proposes to amend §19.210, concerning temporary change of ownership, §19.211, concerning relocation, §19.2301, concerning conditions for participation as a Medicaid-certified facility; to repeal §19.2322, concerning allocation, reallocation, and decertification requirements, §19.2324, concerning selection and contracting procedures for adding Medicaid beds in high-occupancy areas, and §19.2325, concerning selection and contracting procedures for rural counties; and new §19.2322, concerning Medicaid bed allocation requirements, and §19.2324, concerning selection and contracting procedures for adding Medicaid beds in high-occupancy areas, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendments, repeals, and new sections is to clarify definitions; allow DHS to make exceptions to the quality-of-care screen when necessary to benefit Medicaid recipients; require bed allocation exemptions to comply with Centers for Medicare & Medicaid Services (CMS) restrictions; restrict the transferability of waivers; relax spend-down provisions; require applicants for certain waivers to submit a demographic study that presents objective evidence to justify the waiver request; move the rural county waiver requirements from §19.2325 to the bed allocation rules waiver section and delete §19.2325; standardize time limits and extensions; require applicants granted waivers or exemptions to submit progress reports on construction; require property owners of closed facilities to identify their plans for future use of allocated Medicaid beds; establish informal review procedures; and simplify the requirements that pertain to high-occupancy counties by deleting the requirements for proof of ownership of land, a letter of finance, liquidated damages, and a third posting of notice of an open solicitation period for additional Medicaid beds.

James R. Hine, Commissioner, has determined that for the first five-year period the proposed sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. 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 rule language that is easier for the general public to understand. The proposal also promotes competition, which may result in an improved quality of care, and allows private-pay residents who spend- down their resources to have greater access to Medicaid beds. The proposal adds flexibility to the quality-of-care screen in order to benefit Medicaid recipients. There will be no effect on small or micro businesses as a result of enforcing or administering the sections, because while the proposed sections change departmental procedure, they do not require anything of facilities, unless they choose to seek additional Medicaid beds. Large, small, or micro facilities seeking a community needs, under-served minority, or Alzheimer's waiver will have to pay for an independent, professional demographic study to justify their request for a waiver. Such studies will cost the same amount regardless of the facility size. There is no way to reduce the cost for smaller businesses. There is no anticipated economic cost to persons who are required to comply with the

proposed sections. 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 Susan Syler at (512) 438- 3111 in DHS's Long Term Care-Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-212, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

40 TAC §19.210, §19.211

The amendments are proposed 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 Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.036 and §§32.001-32.052.

§19.210. Temporary Change of Ownership.

(a) (No change.)

(b) A nursing facility license holder with an excellent operating record may be eligible to acquire a license on an expedited basis to operate another existing nursing facility. A license holder that appears on the expedited change of ownership list may be granted expedited approval in obtaining a temporary change of ownership license to operate another existing nursing facility in Texas.

(1) (No change.)

(2) In order to establish and maintain the excellent performing nursing facility license holder list, DHS uses the criteria found in §19.2322(e) [~~§19.2322(d)~~] of this title (relating to Medicaid Bed Allocation Requirements [~~Allocation, Reallocation, and Decertification Requirements~~]). An excellent performing nursing facility license holder meeting these criteria appears on the list and is eligible for an expedited change of ownership license to operate another existing institution in Texas.

(3)-(9) (No change.)

(c)-(g) (No change.)

§19.211. Relocation.

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

(f) This section applies to relocation of a currently licensed facility, and does not govern the relocation of Medicaid-certified beds. See §19.2322 of this title (relating to Medicaid Bed Allocation Requirements [~~Allocation, Reallocation, and Decertification Requirements~~]) for guidelines on relocation of Medicaid-certified beds.

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

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203910

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: August 4, 2002

For further information, please call: (512) 438-3734

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SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

40 TAC §§19.2301, 19.2322, 19.2324

The amendment and new sections are proposed 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 Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment and new sections implement the Human Resources Code, §§22.001- 22.036 and §§32.001-32.052.

§19.2301. Conditions for Participation as a Medicaid-Certified Facility.

(a) The facility must meet the following conditions to be approved by the Texas Department of Human Services (DHS) for participation in the Title XIX Texas Medical Assistance program and receive state and federal reimbursement for services to Title XIX residents:

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

(3) the beds for which the facility wishes to contract meet the requirements of §19.2322 of this title (relating to Medicaid Bed Allocation Requirements [~~Additional Participation Requirements~~]).

(b) Only a facility with a fully executed [~~fully-executed~~] current contract with DHS may receive state and federal reimbursement for services to Title XIX recipients.

§19.2322. Medicaid Bed Allocation Requirements.

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

(1) Applicant--The entity requesting a bed allocation waiver or exemption.

(2) Assignment of rights--The conveyance of all rights to a specific number of allocated Medicaid beds from a nursing facility or entity to another entity for purposes of constructing a new nursing facility or for any other use as authorized by these rules.

(3) Bed allocation--The process by which the Texas Department of Human Services (DHS) controls the number of nursing facility beds that are eligible to become Medicaid-certified in each nursing facility.

(4) Bed certification--The process by which DHS certifies compliance with state and federal Medicaid requirements for a specified number of Medicaid beds within a nursing facility.

(5) Licensee--The entity, which includes controlling persons, that is:

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

(B) licensed by DHS under Chapter 242 of the Texas Health and Safety Code; or

(C) licensed under Chapter 242 of the Texas Health and Safety Code and holds the contract to provide Medicaid services.

(6) Lien holder--The entity that holds a lien against the physical plant.

(7) Multiple-facility owner--An entity that owns, controls, or operates under lease two or more nursing facilities within or across state lines.

(8) Occupancy rate--The number of residents occupying certified Medicaid beds divided by the number of certified Medicaid beds in a nursing facility.

(9) Physical plant--The land and attached structures to which beds are allocated or for which an application for bed allocation has been submitted.

(10) Property owner--The person or entity that owns a physical plant.

(11) Transfer of beds--The conveyance of a specific number of allocated Medicaid beds from a nursing facility or entity to an existing licensed nursing facility. The nursing facility may use the transferred Medicaid beds to increase the number of Medicaid-certified beds currently licensed or to increase the number of Medicaid certified beds when additional licensed beds are added to the nursing facility in the future.

(b) Purpose. The purpose of this section is to control the number of Medicaid beds for which DHS contracts, to improve the quality of resident care by selective and limited allocation of Medicaid beds, and to promote competition.

(c) Bed allocation general requirements. The allocation of Medicaid beds represents an opportunity for the property owner or the lessee of a nursing facility to obtain a Medicaid nursing facility contract for a specific number of Medicaid-certified beds.

(1) Medicaid beds are allocated to a nursing facility and remain at the physical plant to which they originally were allocated, unless beds are assigned or transferred in accordance with these requirements.

(2) When Medicaid beds are allocated to a nursing facility as a result of actions by the licensee, the beds remain allocated to the physical plant, even when the licensee ceases operating the nursing facility, unless the beds are subsequently assigned or transferred in accordance with these requirements.

(3) Notwithstanding any language in subsections (f) and (g) of this section and the fact that applicants for bed allocation waivers and exemptions may be licensees or property owners, beds are allocated to the physical plant and the rights to all allocated Medicaid beds belong to the property owner, subject to any and all valid physical plant liens.

(d) Control of beds. Except as specified in this section, DHS does not accept applications for a Medicaid contract for nursing facility beds from any nursing facility that was not granted:

(1) a valid certificate of need (CON) by the Texas Health Facilities Commission before September 1, 1985;

(2) a waiver by DHS before January 1, 1993; or

(3) other valid order that had the effect of authorizing the operation of the nursing facility at the bed capacity for which participation is sought.

(e) Quality of care. Unless specifically exempted from this requirement, applicants for Medicaid bed allocation waivers or exemptions and any controlling persons must demonstrate a history of providing quality care.

(1) In determining if an applicant or a controlling person has a history of providing quality care, DHS may consider the provisions detailed in §19.214(a) of this title (relating to Criteria for Denying a License or Renewal of a License).

(A) Additionally, DHS will determine an applicant to have demonstrated a history of quality of care if, within the preceding 24 months, an applicant has not received any of the following sanctions:

(i) termination of Medicaid and/or Medicare certification;

(ii) termination of Medicaid contract;

(iii) denial, suspension or revocation of nursing facility license;

(iv) cumulative Medicaid and/or Medicare civil monetary penalties totaling more than $5,000 per facility;

(v) civil penalties pursuant to §242.065 of the Texas Health and Safety Code; or

(vi) denial of payment for new admissions; and

(B) DHS finds no clear pattern of substantial or repeated licensing and Medicaid sanctions, including administrative penalties and/or other sanctions.

(2) Nursing facilities that have received any of the sanctions listed under paragraph (1) of this subsection within the previous 24 months are not eligible for an allocation of additional Medicaid beds. In the case of sanctions that are appealed, either administratively or judicially, an application will be suspended until the appeal has been resolved. Sanctions that have been administratively withdrawn or were subsequently reversed upon administrative or judicial appeal will not be considered.

(3) When the applicant for an allocation of additional Medicaid beds is a multiple-facility owner or a multiple-facility owner owns an applicant nursing facility, the multiple-facility owner must demonstrate an overall record of providing quality care in addition to the applicant facility's meeting the quality-of-care requirements in this subsection.

(4) When a licensee has operated a nursing facility for less than 24 months, the nursing facility must establish at least a 12-month compliance record in which the nursing facility has not received any of the sanctions listed under paragraph (1) of this subsection.

(5) When the applicant has no history of operating nursing facilities, DHS will review the compliance record of health-care facilities operated, managed or otherwise controlled by controlling parties of the applicant. If the controlling parties or the applicant has never operated, managed or otherwise controlled any health-care facilities, a compliance review will not be required.

(6) The commissioner, or the commissioner's designee, may make an exception to any of the requirements in this subsection if it is determined the needs of Medicaid recipients in a local community will be served best by granting a Medicaid bed allocation waiver or exemption. In determining whether to make an exception to the quality-of-care requirements, the commissioner or the commissioner's designee may consider the following:

(A) the overall compliance record of the waiver or exemption applicant;

(B) the current availability of Medicaid beds in facilities providing a high quality of care in the local community;

(C) the level of support for the waiver or exemption from the local community;

(D) how a waiver or exemption will improve the overall quality of care for nursing facility residents; and

(E) the age and condition of nursing facility physical plants in the local community.

(f) Exemptions. Under the following circumstances, DHS may grant an exemption of the policy stated in subsection (d) of this section. All exemption actions must comply with the requirements in this subsection and with requirements of the Center for Medicare & Medicaid Services (CMS) regarding bed additions and reductions. When a bed allocation exemption is approved, the licensee must comply with the requirements contained in §19.201 of this title (relating to Criteria for Licensing) at the time of licensure and/or Medicaid certification of the new beds or nursing facility.

(1) Replacement Medicaid nursing facilities and beds. Currently allocated Medicaid beds may be replaced through the construction of one or more new nursing facilities.

(A) The applicant must either own the physical plant to which the beds are allocated or possess a valid assignment of rights to the Medicaid beds.

(B) Assignment of the Medicaid beds to the replacement nursing facility must be approved by all lien holders of the physical plant to which the beds are allocated.

(C) Replacement nursing facility applicants, including those who obtained the rights to the beds through a valid assignment of rights, must comply with the history of quality-of-care requirements in subsection (e) of this section, unless the applicant for a replacement nursing facility is the current property owner.

(D) Replacement facilities will be granted an increase of up to 25% of the currently allocated Medicaid beds, if the applicant complies with the history of quality-of-care requirements in subsection (e) of this section. The additional allocation of beds may not be transferred or assigned until they are certified at the replacement facility.

(E) The replacement nursing facility must be located in the same county in which the Medicaid beds currently are allocated.

(2) Transfer of Medicaid beds. Allocated Medicaid beds currently certified or certified previously may be transferred to another physical plant.

(A) The applicant must own the physical plant to which the beds are allocated or must present DHS with one of the following:

(i) a valid Medicaid bed transfer agreement that specifies the number of additional Medicaid beds to be allocated to the receiving nursing facility; or

(ii) a valid assignment of rights to currently allocated Medicaid beds that specifies the number of additional Medicaid beds to be allocated to the receiving nursing facility.

(B) If the Medicaid beds currently are allocated to a specific physical plant, the current property owner and all current lien holders must approve the transfer agreement.

(C) The receiving licensee must comply with the history of quality-of-care requirements in subsection (e) of this section.

(D) Both facilities must be located in the same county.

(3) High-occupancy facilities. Medicaid-certified nursing facilities with high occupancy rates may periodically receive bed allocation increases.

(A) The occupancy rate of the Medicaid beds of the applicant nursing facility must be at least 90% for nine of the previous 12 months.

(B) The application for additional Medicaid beds may be no greater than 10% (rounded to the nearest whole number) of the current number of Medicaid-certified nursing facility beds.

(C) The applicant nursing facility must comply with the history of quality-of-care requirements in subsection (e) of this section.

(D) The applicant nursing facility may reapply for additional Medicaid beds no sooner than nine months from the date of the previous allocation increase.

(E) Medicaid beds allocated to a nursing facility under this requirement may only be certified at the applicant facility. The additional allocation of beds may not be transferred or assigned until they are certified at the applicant facility.

(4) Non-certified nursing facilities. Licensed nursing facilities that do not have Medicaid-certified beds may receive an initial allocation of Medicaid beds.

(A) The application for Medicaid beds may be no greater than 10% (rounded to the nearest whole number) of the current licensed nursing facility beds.

(B) The applicant licensee must comply with the history of quality-of-care requirements in subsection (e) of this section.

(C) After the applicant receives an allocation of Medicaid beds, the licensee may reapply in accordance with provisions of paragraph (3) of this subsection.

(D) Facilities that have Medicaid beds allocated under provisions of the Alzheimer's waiver may apply for general Medicaid beds in accordance with paragraph (3) or (4) of this subsection. The beds allocated under the Alzheimer's waiver provisions will be excluded from this computation; for example, a 120-bed nursing facility with 60 Alzheimer waiver beds would be eligible for 10% of the 60 remaining beds or 6 additional Medicaid beds.

(5) Low-capacity facilities. For purposes of efficiency, nursing facilities with a Medicaid bed capacity of less than 60 may receive additional Medicaid beds to increase their capacity up to a total of 60 Medicaid beds.

(A) The nursing facility must be licensed for less than 60 beds and have a current certification of less than 60 Medicaid beds.

(B) The nursing facility must have been Medicaid-certified before June 1, 1998.

(C) The applicant licensee must comply with the history of quality-of-care requirements in subsection (e) of this section.

(D) Facilities that have a Medicaid capacity of less than 60 beds due to the loss of Medicaid beds under provisions in subsection (h) of this section are not eligible for this exemption.

(6) Spend-down Medicaid beds. Licensed nursing facilities may receive temporary spend-down Medicaid beds for residents who have "spent down" to become eligible for Medicaid, but for whom no Medicaid bed is available. Approval of spend-down Medicaid beds allows a nursing facility to exceed temporarily its allocated Medicaid bed capacity.

(A) The applicant nursing facility must have a Medicaid contract. If the nursing facility is not currently Medicaid-certified, the licensee must be approved for Medicaid certification and obtain a Medicaid contract.

(B) All Medicaid or dually certified beds must be occupied by Medicaid or Medicare recipients at the time of application.

(C) The application for a spend-down Medicaid bed must include documentation that the person for whom the spend-down bed is requested:

(i) was not eligible for Medicaid at the time of the resident's most recent admission to the nursing facility; and

(ii) was a resident of the nursing facility for at least the immediate three months before becoming eligible for Medicaid, excluding hospitalizations.

(D) The nursing facility is eligible to receive Medicaid benefits effective the date the resident meets Medicaid eligibility requirements.

(E) The nursing facility must assign a permanent Medicaid bed to the resident as soon as one becomes available.

(F) Facilities with multiple residents in spend-down beds must assign permanent Medicaid beds to those residents in the same order the residents were admitted to spend-down beds.

(G) The assignment of residents in spend-down beds to permanent Medicaid beds must precede the admission of new residents to permanent beds.

(H) The nursing facility must notify DHS immediately upon the death or permanent discharge of the resident or transfer of the resident to a permanent Medicaid bed. Failure of the nursing facility to notify DHS of these occurrences in a timely manner is basis for denying applications for spend-down Medicaid beds.

(I) The nursing facility is not required to comply with quality-of-care requirements in subsection (e) of this section.

(g) Waivers. The commissioner or the commissioner's designee may grant a waiver of the policy stated in subsection (d) of this section under certain conditions. Applicants must meet the following conditions to be eligible for the specific waivers in subsection (h) of this section.

(1) The applicant must meet the quality-of-care requirement stated in subsection (e) of this section.

(2) Every waiver application must include identification of all controlling parties of the applicant entity.

(3) At the time of licensure and/or Medicaid certification of the allocated beds, the licensee must comply with the requirements contained in §19.201 of this title.

(4) Approved waivers may be assigned by the applicant to another entity under the following circumstances.

(A) Waivers may be assigned to another entity controlled by the majority owners of the waiver.

(B) Waivers may be assigned to the entity that owns the facility at the time of certification. Assignment of the waiver under these circumstances will be approved by DHS only if the entity that owns the facility at the time of certification complies with subsection (e) of this section and the waiver applicant is the licensee of the new facility. Control of the allocated beds after initial Medicaid certification is subject to subsection (c) of this section.

(C) Assignment of waivers under circumstances listed in subparagraphs (A) and (B) of this paragraph must be reported to DHS.

(5) Any additional controlling parties of the new entity must be reported to DHS. The validity of the waiver will be contingent on the new controlling parties' compliance with the quality-of-care requirements in subsection (e) of this section.

(6) Waiver applicants who submit false information will not be eligible for a waiver. Waivers issued based on false information provided by the applicant are void.

(7) Waiver applications will be considered in the order in which they are received.

(h) Specific waivers. Waivers may be granted if it is determined that Medicaid beds are necessary for the following circumstances.

(1) Community needs waiver. A community needs waiver is designed to meet the needs of communities that do not have reasonable access to quality nursing facility care.

(A) The applicant must submit a study, prepared by an independent professional experienced at preparing demographic studies, that documents:

(i) an immediate need for additional Medicaid beds in the community;

(ii) Medicaid residents in the community do not have reasonable access to quality nursing facility care; and

(iii) substantial community support for the new nursing facility or beds.

(B) Applicants must disclose if they have served as a trustee of a nursing facility within the previous 24 months.

(2) Criminal justice waiver. The criminal justice waiver is designed to meet the needs of the Texas Department of Criminal Justice (TDCJ). The applicant must document that:

(A) the waiver is needed to meet the identified and determined nursing facility needs of TDCJ; and

(B) the new nursing facility is approved by TDCJ to serve persons under their supervision who have been released on parole, mandatory supervision, or special needs parole under the Code of Criminal Procedure, Article 42.18.

(3) Under-served minority waiver. The under-served minority waiver is designed to meet the needs of minority communities that do not have adequate nursing facility care. For purposes of this waiver, the term minority means black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan native. The applicant must submit a study, prepared by an independent professional experienced at preparing demographic studies, that documents:

(A) the new nursing facility or beds will serve a ZIP code that has a minority population greater than 50% according to the most recent U.S. census; and

(B) minority residents in the ZIP code in which the nursing facility or beds will be located do not have reasonable access to quality nursing facility care.

(4) Alzheimer's waiver. The Alzheimer's waiver is designed to meet the needs of communities that do not have reasonable access to Alzheimer's nursing facility services.

(A) The applicant must document that:

(i) the nursing facility is affiliated with a medical school operated by the state;

(ii) the nursing facility will participate in ongoing research programs for the care and treatment of persons with Alzheimer's disease;

(iii) the nursing facility will be designed to separate and treat residents with Alzheimer's disease by stage and functional level;

(iv) the nursing facility will obtain and maintain voluntary certification as an Alzheimer's nursing facility in accordance with §§19.2204, 19.2206, 19.2208 of this title (relating to Voluntary Certification of Facilities for Care of Persons with Alzheimer's Disease; General Requirements for a Certified Facility; and Standards for Certified Alzheimer's Facilities); and

(v) only residents with Alzheimer's disease or related dementia will be admitted to the Alzheimer's Medicaid beds.

(B) The applicant must submit a study, prepared by an independent professional experienced at preparing demographic studies, that documents the need for the number of Medicaid Alzheimer's beds requested.

(5) Teaching nursing facility waiver. A teaching nursing facility waiver is designed to meet the statewide needs for providing training and practical experience for health-care professionals. The applicant must submit documentation that the nursing facility:

(A) is affiliated with a state-supported medical school;

(B) is located on land owned or controlled by the state-supported medical school; and

(C) serves as a teaching nursing facility for physicians and related health-care professionals.

(6) Rural county waiver. A rural county waiver is designed to meet the needs of rural areas of the state that do not have reasonable access to quality nursing facility care. For purposes of this waiver, a rural county is one that has a population of 100,000 or less according to the most recent census, and has no more than two Medicaid-certified nursing facilities. DHS will approve no more than 120 additional Medicaid beds per county per year and no more than 500 additional Medicaid beds statewide in a calendar year under this waiver provision. The waivers will be considered on a first-come, first-served basis. Requests received in a year in which the 500-bed limit has been met will be carried over to the next year. The waiver must be requested by the county commissioner's court.

(A) The commissioner's court must notify DHS of its intent to consider a rural county waiver and obtain verification from DHS that the county complies with the definition of rural county.

(B) The commissioner's court must publish a notice in the *Texas Register* and in a newspaper of general circulation in the county. The notice must seek:

(i) comments on whether a new Medicaid nursing facility should be requested; and

(ii) proposals from persons or entities interested in providing additional Medicaid-certified beds in the county, including persons or entities currently operating Medicaid-certified facilities with high occupancy rates. Persons or entities that submit false information will be eliminated from the process.

(C) The commissioner's court must determine whether to proceed with the waiver request after considering all comments and proposals received in response to the notices provided under subparagraph (B) of this paragraph. In determining whether to proceed with the waiver request, the commissioner's court must consider:

(i) the demographic and economic needs of the county;

(ii) the quality of existing Medicaid nursing facilities in the county;

(iii) the quality of the proposals submitted, including a review of the past history of care provided, if any, by the person or entity submitting the proposal; and

(iv) the degree of community support for additional Medicaid nursing facility services.

(D) The commissioner's court must document the comments received, proposals offered and factors considered in subparagraph (C) of this paragraph.

(E) The commissioner's court, if it decides to proceed with the waiver request, must submit a recommendation that DHS issue a waiver to a person or entity who submitted a proposal for new or additional Medicaid beds. The recommendation must include:

(i) the name, address, and telephone number of the person or entity recommended for contracting for the Medicaid beds;

(ii) the location, if the commissioner's court desires to identify one, of the recommended nursing facility;

(iii) the number of beds recommended; and

(iv) the information listed in subparagraph (D) of this paragraph used to make the recommendation.

(7) State veterans homes. State veterans homes, authorized and built under the auspices of the State Veterans Land Board, must meet all requirements for Medicaid participation.

(i) Time Limits and Extensions.

(1) With the exception of transferred Medicaid beds and temporary Medicaid beds, all beds approved under the exemption provisions of subsection (f) of this section must be constructed, licensed, and certified within 24 months of the exemption approval.

(2) Medicaid beds transferred in accordance with subsection (f)(2) of this section must be certified within six months of the exemption approval.

(3) Time limits applicable to temporary Medicaid beds are specified in subsection (f)(6) of this section.

(4) All facilities and beds approved in accordance with waiver provisions of subsection (h) of this section must be constructed, licensed, and certified within 24 months of the waiver approval.

(5) With the exception of transferred Medicaid beds and temporary Medicaid beds, applicants for exemptions and waivers must submit a progress report every 12 months after approval of the exemption or waiver. The exemption or waiver may be declared void if the applicant fails or refuses to provide the progress report as required or if the progress report contains false information.

(6) At the discretion of the commissioner or the commissioner's designee, deadlines specified in this section may be extended. The applicant must submit evidence of good-faith efforts to meet the deadline and/or evidence that delays were beyond the applicant's control.

(7) Applicants who receive an extension of their waiver of exemption must submit a progress report every six months after approval of the extension until the nursing facility beds are certified. The exemption or waiver may be declared void if the applicant fails or refuses to provide the progress report as required or if the progress report contains false information.

(8) Failure to meet the requirements of this section is grounds for loss of the Medicaid bed allocation.

(j) Loss of Medicaid Beds.

(1) Loss of Medicaid beds based on sanctions.

(A) A Medicaid nursing facility operated by the person or entity who also owns the property will lose the allocation of all Medicaid beds assigned to the nursing facility property if the nursing facility's license is denied or revoked.

(B) A Medicaid nursing facility operated by one person or entity and owned by another person or entity will lose the allocation of Medicaid beds if two or more of the following actions occur within a 42-month period:

(i) licensure denial;

(ii) licensure revocation; or

(iii) Medicaid termination.

(C) DHS may waive this loss of allocation of Medicaid beds in order to facilitate a change of ownership or other actions that would protect the health and safety of residents or assure reasonable access to quality nursing facility care.

(2) Voluntary decertification of Medicaid beds.

(A) Facilities may request to voluntarily decertify Medicaid beds.

(B) The licensee must submit written approval of the Medicaid bed reduction signed by the property owner and all physical plant lien holders.

(C) Medicaid beds voluntarily decertified will result in reduction of allocated Medicaid beds equal to the number of beds decertified.

(D) Facilities that voluntarily decertify Medicaid beds are eligible to receive an increased allocation of Medicaid beds if the facility qualifies for a bed allocation waiver or exemption.

(3) Nursing facility ceases to operate.

(A) The property owner of a nursing facility that closes or ceases to participate in the Medicaid program must inform DHS in writing of the intended future use of the Medicaid beds within 90 days of inquiry from DHS.

(B) Unless the Medicaid beds will be used for a replacement nursing facility, the allocated beds must be re-certified within 12 months of the date the Medicaid contract was terminated.

(C) Time limits in subparagraphs (A) and (B) of this paragraph may be extended in accordance with subsection (i)(6) of this section.

(D) Failure to meet the requirements of this paragraph is grounds for loss of the Medicaid bed allocation.

(k) Informal review procedures.

(1) Applicants may request an informal review of DHS actions regarding bed allocations. The request must be submitted within 30 days of notification of the action.

(2) The request for the informal review and all documentation or evidence that forms the basis for the informal review must be submitted in writing.

(3) The commissioner or the commissioner's designee will conduct the informal review.

(l) Loss of Medicaid beds based on low occupancy.

(1) DHS may review Medicaid bed occupancy rates annually for the purpose of de-allocating and decertifying unused Medicaid beds. The Medicaid bed occupancy reports for the most recent six-month period that DHS has validated will be used to determine the bed occupancy rate of each nursing facility.

(2) Medicaid beds will be de-allocated and decertified in facilities that have an average occupancy rate below 70%. The number of beds to be decertified is calculated by subtracting the preceding six-month average occupancy rate of Medicaid-certified beds from 70% of the number of allocated certified beds and dividing the difference by 2, rounding the final figure down if necessary. For example, for a facility with 100 Medicaid-certified beds and a 50% occupancy rate, the difference between 70% (70 beds) and 50% (50 beds) is 20 beds, divided by 2, is 10 beds to be decertified.

(3) Medicaid beds in a nursing facility that has obtained a replacement nursing facility exemption are not subject to the de-allocation and decertification process.

(4) Medicaid beds in a new or replacement physical plant or a newly constructed wing of an existing physical plant will be exempt from this de-allocation and decertification process until the new physical plant or new wing has been certified for two years.

(5) Medicaid beds that have been subject to a change of ownership within the past 24 months are exempt from the de-allocation and decertification process.

(6) Medicaid beds allocated to a closed nursing facility are exempt from this de-allocation and decertification process.

(7) Nursing facilities that lose Medicaid beds through this process are eligible to receive an additional allocation of Medicaid beds at a later date if the facility qualifies for a bed allocation waiver or exemption.

(8) The de-allocation and decertification of unused beds does not affect the licensed capacity of the nursing facility.

(m) Medicaid occupancy reports.

(1) Medicaid nursing facilities must submit occupancy reports to DHS each month.

(A) The occupancy data must be reported on a form prescribed by DHS. The form must be completed in accordance with instructions and the occupancy data must be accurate and verifiable. The completed report must be submitted to DHS no later than the fifth day of the month following the reporting period.

(B) The Medicaid occupancy rate will be determined by calculating the monthly average of the number of persons who occupy Medicaid beds.

(C) All persons residing in Medicaid-certified beds, including Medicaid recipients, Medicare recipients, private-pay residents or residents with other sources of payment, will be included in the calculation.

(D) Failure or refusal to submit accurate occupancy reports in a timely manner may result in the nursing facility's vendor payment being held in abeyance until the report is submitted.

(2) DHS will determine nursing facility and county occupancy rates based on the data submitted by the nursing facilities.

(A) The occupancy data will be used to determine eligibility for and/or compliance with waiver and exemption requirements. The occupancy data also will be used to determine if Medicaid beds should be decertified based on low occupancy.

(B) The occupancy data will be made available to nursing facilities, licensees, property owners, waiver or exemption applicants and others in accordance with public disclosure requirements.

(C) Inaccurate or falsified occupancy data is grounds to disqualify facilities from eligibility for bed allocation exemptions and waivers. DHS may refuse to accept corrections to bed occupancy data submitted more than six months after the due date of the occupancy report.

(n) School-age residents. Any bed allocation waiver or exemption applicant that serves or plans to serve school-age residents must provide written notice to the affected local education agency (LEA) of its intent to establish or expand a nursing facility within the LEA's boundary.

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

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

(1) County occupancy rate--The number of residents occupying certified Medicaid beds in a county divided by the number of Medicaid beds allocated in the county. This calculation includes Medicaid beds that currently are certified and Medicaid beds that have been allocated but are not currently certified. In the four most populous counties, the occupancy rate will be calculated for each county-commissioner precinct.

(2) Open solicitation period--A time period in which licensees, property owners and other entities may apply for an allocation of Medicaid beds in high-occupancy counties or precincts.

(b) Primary selection process.

(1) DHS will monitor monthly Medicaid occupancy rates. When DHS determines that the occupancy rate for any county, or any precinct in the four most populous counties, equals or exceeds 90% for six consecutive months, a public notice will be placed in the *Texas Register* and the Electronic State Business Daily (ESBD) to announce an open solicitation period.

(2) The public notice will announce that DHS will allocate additional Medicaid beds to eligible nursing facilities. The notice will specify that the solicitation is limited to currently licensed nursing facility beds that may be converted to Medicaid-certified beds and that the number of beds allocated will be limited to the number necessary to reduce the county or precinct occupancy rate to 85%.

(3) The public notice will identify the county and/or precinct, the six-month occupancy average for the county or precinct and the beginning and end dates of the open solicitation period. The notice also will include the DHS address to which the application for additional Medicaid beds must be submitted and will specify that the application must be received by DHS before the close of business on the end date of the solicitation period.

(4) Current licensees and/or property owners of licensed facilities that choose to apply for the allocation of additional Medicaid beds must demonstrate a history of quality care as specified in §19.2322(e) of this title (relating to Medicaid Bed Allocation Requirements).

(5) Applicants must provide the name and address of the nursing facility, the name, address, and telephone number of the contact person, the number of licensed beds available and the number of additional Medicaid beds requested.

(6) At the end of the solicitation period, DHS will determine if any applicant is eligible for additional Medicaid beds and if the number of eligible licensed beds is adequate to reduce the county or precinct occupancy rate to below 90%. DHS will allocate the number of Medicaid beds necessary to reduce the occupancy rate to below 90%. If eligible nursing facilities have additional licensed beds available for conversion to Medicaid beds, DHS will allocate additional beds, but not more than the number of beds necessary to reduce the occupancy rate to 85%.

(7) If more than one nursing facility is eligible for additional Medicaid beds, the beds will be allocated equally to each facility.

(8) The additional allocation of Medicaid beds may not be transferred or assigned until they are certified at the applicant facility.

(9) Medicaid beds allocated under this provision must be certified within six months of allocation and must comply with time limit and extension requirements specified in §19.2322(i) of this title.

(c) Secondary selection process.

(1) When the primary selection process does not result in the allocation of additional Medicaid beds necessary to reduce the occupancy rate to below 90%, DHS will place a second notice in the *Texas Register* and the ESBD. The second notice will announce that additional Medicaid beds may be allocated to eligible applicants that desire to construct a new nursing facility or to construct an addition to an existing nursing facility. In counties with 1,500 or more Medicaid beds, the notice will specify that the allocation is limited to no more than 120 beds. In counties with fewer than 1,500 Medicaid beds, the notice will specify that the allocation is limited to no more than 90 beds.

(2) The second notice will identify the county and/or precinct, the six-month occupancy average for the county or precinct and the beginning and end dates of the solicitation period. The notice also will include the DHS address to which the application for additional Medicaid beds must be submitted and will specify that the application must be received by DHS before the close of business on the end date of the solicitation period.

(3) Applicants for the secondary waiver process must demonstrate a history of quality care as specified in §19.2322(e) of this title.

(4) Applicants must provide the name and address of the applicant entity, the name, address, and telephone number of the contact person, the name and address of all controlling parties of the applicant entity and the number of Medicaid beds requested.

(5) At the end of the secondary solicitation period, DHS will determine if any applicant is eligible for additional Medicaid beds. If multiple applicants are eligible, the applicant that will receive the allocation of beds will be chosen by a lottery selection. Applicants who submit false information are not eligible for the allocation of Medicaid beds. Medicaid beds allocated based on false information are not eligible for Medicaid certification and the allocation is revoked.

(6) Medicaid beds allocated under this provision may only be transferred to another entity controlled by the same majority owners. Transfers under these circumstances must be reported to DHS.

(7) If no application for the secondary waiver process is received or if no applicant meets the requirements in this section, no further solicitations will occur.

(8) In counties with no licensed nursing facilities, DHS will implement the secondary selection process when it is determined that the county population exceeds 5,000. Since those counties contain no licensed beds eligible for the primary selection process, DHS will omit that part of the process.

(9) Medicaid beds allocated under this provision must be constructed, licensed and certified within 24 months of allocation and must comply with time limit and extension requirements specified in §19.2322(i) of this title.

(d) Informal review procedures.

(1) Applicants may request an informal review of DHS actions in this section. The request must be submitted within 30 days of notice of the action.

(2) The request for the informal review and all documentation or evidence that forms the basis for the informal review must be submitted in writing.

(3) The commissioner or the commissioner's designee will conduct the informal review.

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

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203911
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: August 4, 2002
For further information, please call: (512) 438-3734

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40 TAC §§19.2322, 19.2324, 19.2325

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs; and under Texas Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.036 and §§32.001-32.052.

§19.2322. Allocation, Reallocation, and Decertification Requirements.

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

§19.2325. Selection and Contracting Procedures for Rural Counties.

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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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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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 daysafter the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federalstatute or regula tion 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 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION

SUBCHAPTER B. GENERAL

7 TAC §3.37

The Texas Finance Commission (the commission) adopts the amendment to §3.37 concerning the calculation of annual assessments for banks. The section is adopted without changes to the proposed text as published in the May 17, 2002 issue of the *Texas Register* (27 TexReg 4254) and the text will not be republished.

Section 3.37 provides a table with steps for determining annual assessments for banks. The amendment reduces assessments for banks with over $1 billion in assets by adjusting the applicable multiplication factor in the assessable asset group of over $1 billion and by adding two new assessment categories: (1) for banks with assets between $5 billion and $10 billion; and (2) banks with over $10 billion in assets. The addition of these new categories makes assessments more equitable for larger banks by recognizing the increased efficiencies of supervision of larger institutions.

The commission received no comments on the proposal for amendment.

The amendment is adopted under Finance Code, §§11.301 and 31.003, which authorize the commission to adopt rules to recover the cost of maintaining and operating the Department of Banking by imposing and collecting ratable and equitable fees, and under Finance Code §31.106, which requires each state bank to pay the equitable or proportionate cost of maintenance and operation of the department and the cost of enforcement of applicable Finance Code provisions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203890

Everette D. Jobe
Certifying Official
Finance Commission of Texas
Effective date: July 11, 2002
Proposal publication date: May 17, 2002
For further information, please call: (512) 475-1300

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 17. TRUST COMPANY REGULATION

SUBCHAPTER A. GENERAL

7 TAC §17.1

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, adopts the repeal of §17.1, concerning Ratable Increases in Required Capital, without changes to the proposal as published in the May 17, 2002 issue of the *Texas Register* (27 TexReg 4255).

The commission adopted §17.1 for the specific purpose of providing a timetable for a trust company to achieve a minimum restricted capital requirement of not less than $1 million by September 1, 2000. All Texas trust companies have achieved and now maintain at least the minimum required level of restricted capital. The repeal of §17.1 eliminates an obsolete regulation.

The commission received no comments regarding the proposed repeal.

The repeal is adopted under Government Code, §2001.039, which requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rule continue to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203894

Everette D. Jobe
Certifying Official
Texas Department of Banking
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For further information, please call: (512) 475-1300

CHAPTER 17. TRUST COMPANY REGULATION

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (department), adopts amendments to §17.2, concerning trust company advertising; §17.3, concerning sale or lease agreements with an officer, director, principal shareholder or affiliate; §17.4, concerning bonding requirements; and §17.23, concerning call reports. The amendments are adopted without changes to the proposed text as published in the May 17, 2002 issue of the *Texas Register* (27 TexReg 4256). The text will not be republished.

The department has determined that the statutory references in these sections need to be amended. The sections cite statutes that were repealed in connection with the codification of Texas Revised Statutes, Article 342a-1.001, et seq. into the Finance Code in 1999. The amendments conform the statutory references to the sections in which the referenced authority now appears in Finance Code, Title 3, Subtitle F.

The commission received no comments regarding the proposal.

SUBCHAPTER A. GENERAL

7 TAC §§17.2 - 17.4

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules as necessary for the implementation and administration of Finance Code, §§181.001, et seq.

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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Everette D. Jobe
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Texas Department of Banking
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SUBCHAPTER B. EXAMINATION AND CALL REPORTS

7 TAC §17.23

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules as necessary for the implementation and administration of Finance Code, §§181.001, et seq.

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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For further information, please call: (512) 475-1300

CHAPTER 19. TRUST COMPANY LOANS AND INVESTMENTS

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (department), adopts amendments to §19.1, concerning grandfathered loans; §19.21, concerning grandfathered investments; §19.22, concerning investments in mutual funds; and §19.51, concerning other real estate owned. The amendments are adopted without changes to the proposed text as published in the May 17, 2002 issue of the *Texas Register* (27 TexReg 4257). The text will not be republished.

The department has determined that the statutory references in these sections need to be amended. The sections cite statutes that were repealed in connection with the codification of Texas Revised Statutes, Article 342a-1.001, et seq. into the Finance Code in 1999. The amendments conform the statutory references to the sections in which the referenced authority now appears in Finance Code, Title 3, Subtitle F.

The commission received no comments regarding the proposal.

SUBCHAPTER A. LOANS

7 TAC §19.1

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules as necessary for the implementation and administration of Finance Code, §§181.001, et seq.

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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Everette D. Jobe
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Texas Department of Banking
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SUBCHAPTER B. INVESTMENTS

7 TAC §19.21, §19.22

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules as necessary for the implementation and administration of Finance Code, §§181.001, et seq.

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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SUBCHAPTER C. REAL ESTATE

7 TAC §19.51

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules as necessary for the implementation and administration of Finance Code, §§181.001, et seq.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 25. PREPAID FUNERAL CONTRACTS

SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §§25.19 - 25.23

The Finance Commission of Texas (the commission) adopts amendments to §25.19, concerning notice of seizure and the bid process; §25.20, concerning guaranty fund claims filing procedures and eligibility for payment standards; §25.21, concerning introduction to the joint memorandum of understanding between the Department of Banking (department), the Texas Funeral Service Commission, and the Texas Department of Insurance; §25.22, concerning the joint memorandum of understanding; and §25.23, concerning application fees. Section 25.19 is adopted with changes to the text as published in the May 17, 2002, issue of the *Texas Register* (27 TexReg 4259). Sections 25.20 - 25.23 are adopted without changes and will not be republished.

Section 25.19 provides procedures for the department in connection with cancellation of a prepaid funeral permit and seizure of prepaid funeral funds. The section requires the department to maintain a bid list of permit holders who wish to assume a canceled permit holder's obligations under prepaid funeral contracts and the right to receive the balance of the prepaid funeral funds paid or to be paid under the contracts. Subsection (c) of this section requires the department to notify persons on the bid list within 60 days after it cancels a permit. One of the changes to this provision clarifies that it means on or before the 60th day after the date of final cancellation. The clarification is necessary to ensure that bids are not solicited prior to a determination on an order of cancellation through the hearing process, if a hearing is requested by a permit holder. The other change to subsection (c) adds all funeral providers in the vicinity of a canceled permit holder to the list of persons the department must notify after a permit cancellation. The addition of these persons to the bid list will enable the department to more quickly place preneed contracts of a canceled permit holder with another permit holder and thereby ensure consumers are protected. The addition will also increase the likelihood that preneed contracts will be placed with a provider that is conveniently located to consumers.

Section 25.20 provides procedures for making a claim against the Guaranty Fund. The section requires a claimant to file a certified copy of the death certificate for a person designated to receive funeral benefits under a preneed contract. One of the changes to the provision clarifies that the department will accept a copy of the certified copy of the death certificate, which will save consumers the cost of purchasing a new certified copy. The remaining changes include nonsubstantive clerical or clarifying changes and the deletion of an obsolete provision.

Section 25.21 provides an introduction to the memorandum of understanding between the department, the Texas Funeral Service Commission, and the Texas Department of Insurance, set out in §25.22. The only amendment to §25.21 is to update a citation. The amendments to §25.22 make the rule consistent with the rules of the Texas Funeral Service Commission, which has recently adopted these changes in the memorandum of understanding. The changes are nonsubstantive clerical changes or updates to citations, except for the change to §25.22(g)(2). The amendment to this provision increases the minimum recommended penalty that may be assessed by the Texas Funeral Services Commission for a violation of Finance Code, Chapter 154, from $500 to $1,000.

Section 25.23 governs application fees. The amendments increase the new permit application fee and the re-application fee of a previous permit holder from $500 to $2,500. The amendments also increase fees associated with conversion of a trust-funded prepaid funeral benefits operation to an insurance-funded prepaid funeral benefits operation. Applications for conversions that result in the issuance of an annuity product identical in form to one that was previously approved by the department will increase from $500 to $1,000. The total fee the department can charge for processing an incomplete conversion application will increase from $1,000 to $2,000. The higher fees reflect the actual cost to the department related to these applications. These fees were established by the department, and not mandated by the Legislature.

No comments were received on the proposal.

The amendments are adopted under Finance Code, §154.051, which authorizes the commission to adopt rules necessary to enforce and administer Finance Code, Chapter 154.

§25.19. Notice of Seizure; the Bid Process.

(a) Notice to purchasers. Within 30 days of cancellation of a permit to sell prepaid funeral benefits and the seizure of prepaid funeral funds, the department shall notify those who have purchased prepaid funeral contracts from the cancelled permit holder. The notice shall inform the purchasers of the cancellation and seizure; provide instructions set out in Texas Civil Statutes, Article 548b, §4(g); provide an address to which any future payments due under the contracts must be sent; explain how monies can be released from the seized funds prior to selection of a successor permit holder; and explain how the contract may be cancelled should the purchaser wish to cancel it.

(b) Bid list. The department shall maintain a bid list of permit holders who wish to bid for the right to assume the cancelled permit holder's obligations under prepaid funeral contracts and the right to receive the balance of prepaid funeral funds paid or to be paid under those contracts. Upon the request of any permit holder, the department shall add to or delete from the bid list the permit holder's name. The department shall purge the list by deleting the names of those whose permits are cancelled or surrendered prior to the consideration of any bid award.

(c) Solicitation of bids. On or before the 60th day after the date of final cancellation of a permit to sell prepaid funeral benefits, the department shall notify those on the bid list and all funeral providers in the vicinity of the canceled permit holder of the cancellation. The notice shall include the name and address of the cancelled permit holder, the number and aggregate dollar amount of unperformed prepaid funeral contracts, the balance of unearned prepaid funeral funds, and the date by which sealed bid proposals must be submitted to the department to be considered for the bid award. The notice shall also include instructions as to how eligible potential bidders may inspect the cancelled permit holder's prepaid funeral contract records. The seized contracts will be bid on as a bloc rather than on an individual contract basis, and the commissioner shall have the discretion to combine or group contracts seized for bidding and sale purposes. The notice shall inform any non-permit holder that it must apply for and obtain a permit from the commissioner to sell prepaid funeral benefits in the State of Texas in the event that it receives the bid award.

(d) Solicitation of bids on certain contracts. The commissioner may also from time to time solicit bids on seized prepaid funeral contracts which were not placed with successor permittees as a result of the original or any subsequent bid solicitations.

(e) Selection criteria.

(1) Time of selection. After the deadline has expired for submitting sealed bids, the commissioner may select a successor to the cancelled permit holder.

(2) Criteria for permit holders. If the bidder is a permit holder, the commissioner shall consider:

(A) whether the bidder has demonstrated an ability to properly manage, maintain, and account for its own prepaid funeral funds;

(B) whether the bidder has properly remedied violations of law cited by the department in its examination reports;

(C) whether the bidder has a history of repeated or continuous violations;

(D) whether the bidder has the ability to fulfill the terms of the prepaid funeral contract;

(E) whether the bidder poses any other significant regulatory concern; and

(F) the amount of money in the cancelled permit holder's prepaid funeral funds, the value of receivables that are due under the contracts of the cancelled permit holder to a successor permit holder, the amount of money offered for the prepaid funeral business, the current or potential claim against the guaranty fund, and any other relevant information.

(3) Criteria for non-permit holder funeral providers. If the bidder is a non-permit holder funeral provider, the commissioner shall consider, to the extent applicable, all of the factors listed in paragraph (2) of this subsection and the following:

(A) the bidder's general reputation in the community where it is located;

(B) whether the bidder's business ability, experience, character, and general fitness warrant the confidence of the public;

(C) any state or federal regulatory or law enforcement, administrative, or other action taken against the bidder; and

(D) the bidder's willingness to obtain a permit from the commissioner to sell prepaid funeral benefits in the State of Texas and to abide by the statutes and rules governing such permits.

(4) Rejection of bids. The commissioner may reject all bid proposals received pursuant to this section. If all bids are rejected, a new bid proposal may be solicited or, alternatively, the balance of prepaid funeral funds paid or to be paid under the contracts of the cancelled permit holder shall be received into the guaranty fund for management by the Guaranty Fund Advisory Council, and the department shall manage the prepaid funeral contracts; provided, however, that the commissioner may thereafter solicit additional bid proposals under subsection (d) of this section.

(f) Selection of successor. The commissioner alone shall be responsible for the selection of a successor permit holder under this section. The commissioner shall make no contract regarding the selection of a successor permit holder that obligates the guaranty fund in any way until a vote of the members of the Guaranty Fund Advisory Council approving such obligation has been given in a properly posted open meeting.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203909
Everette D. Jobe
Certifying Official
Texas Department of Banking
Effective date: July 11, 2002
Proposal publication date: May 17, 2002
For further information, please call: (512) 475-1300

PART 4. TEXAS SAVINGS AND LOAN DEPARTMENT

CHAPTER 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

SUBCHAPTER B. PROFESSIONAL CONDUCT

7 TAC §80.9

The Finance Commission of Texas (the "Finance Commission") adopts an amendment to §80.9, concerning the filing of consumer complaints with the Texas Savings and Loan Department (the "department") with changes to the proposed text as published in the March 15, 2002, issue of the *Texas Register* (27 TexReg 1967). The new §80.9(c) will implement the requirements of *Finance Code*, §11.307, pertaining to the filing of consumer complaints with the department, as enacted by the 77th Legislative through House Bill 1763.

Background and Summary of Factual Basis for the Rules

Section 80.9(c) will specify the manner in which Mortgage Brokers and Loan Officers provide consumers with information on how to file complaints with the department. The new subsection will also require that the information on how to file complaints be included with each privacy notice a Mortgage Broker or Loan Officer is required by law to provide to consumers.

The amendment to the rule was approved by the Finance Commission on February 22, 2002, for publication for public comments. No written comments were received.

On June 5, 2002, the Mortgage Broker Advisory Committee reviewed the new subsection for final adoption and advised the Commissioner and the Finance Commission that the new subsection should be adopted without changes to the form in which they were published.

The amendment is adopted under the authority of *Finance Code*, §11.307, which requires the Finance Commission to adopt rules specifying the manner in which Mortgage Brokers and Loan Officers provide consumers with information on how to file complaints with the department.

§80.9. Required Disclosures.

(a) At the time an application for a Mortgage Loan is made to a Mortgage Broker or Loan Officer, the Mortgage Broker or Loan Officer shall provide the Mortgage Applicant with a disclosure describing their relationship, the duties of the Mortgage Broker or Loan Officer to the Mortgage Applicant, and a description of how the Mortgage Broker or Loan Officer will be compensated for his or her services. Such disclosures are to be made using forms promulgated by the Commissioner. Such disclosures shall include a statement to the effect that the Department oversees the enforcement of the Act (including conducting investigations of any complaints) and provide a consumer toll free telephone number for the Department.

(b) Anytime a Mortgage Broker or Loan Officer charges or receives from a Mortgage Applicant a fee for a service that is provided by a third party and retains any portion of the fee so charged or received:

(1) The portion retained by the Mortgage Broker or Loan Officer and a description of the service actually rendered by the Mortgage Broker or Loan Officer shall be disclosed to the Mortgage Applicant in writing and

(2) The portion so retained by the Mortgage Broker or Loan Officer shall not exceed the reasonable value of services actually rendered by the Mortgage Broker or Loan Officer for the benefit of the Mortgage Applicant.

(3) Any Mortgage Broker or Loan Officer retaining any portion of any fee or fees charged by third parties, however denominated, shall maintain appropriate documentation to substantiate the basis for the retention of such monies, including the reasonable value of the services rendered for such fee or fees.

(4) Affiliated business arrangements, as provided for under the Real Estate Settlement Procedures Act, and payments made pursuant thereto shall be disclosed to Mortgage Applicants as provided for by the Real Estate Settlement Procedures Act and the regulations implementing that act.

(c) Consumer Complaint Procedure

(1) Definitions

(A) "Privacy notice" means any notice which a Mortgage Broker or Loan Officer gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(B) "Required notice" means a notice in a form set forth or provided for in paragraph (2)(A) of this subsection.

(2) Notice of how to file complaints

(A) In order to let its consumers know how to file complaints, Mortgage Brokers and Loan Officers must use the following notice: (Name of Mortgage Broker or Loan Officer) is licensed under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas Savings and Loan Department. Any consumer wishing to file a complaint against (name of Mortgage Broker or Loan Officer) should contact the Texas Savings and Loan Department through one of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 475-1360, E-mail: TSLD@tsld.state.tx.us

(B) A required notice must be included in each privacy notice that a Mortgage Broker or Loan Officer sends out.

(C) Regardless of whether a Mortgage Broker or Loan Officer is required by any state or federal law to give privacy notices, each Mortgage Broker or Loan Officer must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with subparagraph (A) of this paragraph or by providing the disclosure specified in this subsection.

(D) Any one of the following measures is deemed to be an appropriate step to give the required notice:

(i) In each registered office or branch office where a Mortgage Broker or Loan Officer conducts business on a face-to-face basis, the required notice, in the form specified in subparagraph (A) of this paragraph, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted;

(ii) If a Mortgage Broker or Loan Officer maintains a web site, the required notice must be included in a screen prominently displayed; or

(iii) Providing a completed mortgage broker disclosure in the form required by subsection (a) of this section executed at application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203938

James L. Pledger
Commissioner
Texas Savings and Loan Department
Effective date: July 14, 2002
Proposal publication date: March 15, 2002
For further information, please call: (512) 475-1350

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 82. ADMINISTRATION

7 TAC §82.2

The Finance Commission of Texas (the commission) adopts an amendment to 7 TAC §82.2, concerning public information requests and charges. The amendment is adopted without changes to the proposal as published in the May 17, 2002, issue of the *Texas Register* (27 TexReg 4263).

The purpose of the amendment is to make technical changes to the rules in order to conform with the Texas Building and Procurement Commission rules. The specific issues addressed relate to: (1) the Texas Open Records' name change to the Texas Public Information Act, (2) the General Service Commission's name change to the Texas Building and Procurement Commission, and (3) changing the Open Records Coordinator to the Public Information Officer. The Texas Government Code §552.262 requires governmental bodies to use Texas Building and Procurement Commission rules when responding to requests for public information.

The commission received no written comments on the rule proposal.

The amendment is adopted under Texas Government Code §552.262, which requires governmental entities to use Texas Building and Procurement Commission rules when responding to request for public information and in determining charges for providing public information.

Texas Government Code Chapter 552 is affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203954
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: July 14, 2002
Proposal publication date: May 17, 2002
For further information, please call: (512) 936-7640

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES, AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §25.242

The Public Utility Commission of Texas (commission) adopts an amendment to §25.242 relating to Arrangements Between Qualifying Facilities and Electric Utilities, with changes to the proposed text as published in the January 4, 2002, *Texas Register* (27 TexReg 18). This amendment addresses the sale and purchase of electricity between qualifying facilities (QFs) and retail electric providers (REPs) with the price to beat (PTB) obligation (PTB REPs) in the restructured electric market that became effective on January 1, 2002. The amendment retains the applicability of the rule pertaining to arrangements between qualifying facilities and electric utilities in the parts of Texas in which the electric market has not yet been restructured. This amendment is adopted under Project Number 24365.

The federal Public Utility Regulatory Policies Act of 1978, Public Law No. 95-617, 92 Stat. 3117 (codified as amended in scattered Sections 815, 816, 842-43) (PURPA) gives QFs the right to sell (put) electricity to electric utilities at "avoided costs." A state agency is expected to implement this requirement for "each electric utility, for which it has rate making authority." 16 U.S.C. §824a-3(f)(1)(2000). PURPA defines "electric utility" broadly: "any person, State agency, or Federal agency, which sells electric energy." 16 U.S.C. §2602(4)(2000). In the restructured Texas market, both REPs and power generation companies (PGCs) are electric utilities for purposes of PURPA. *See* Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §31.002(10) and (17) (Vernon 1998 & Supplement 2002). However, the only entities that sell electricity in the restructured market over which the commission has ratemaking authority are PTB REPs and providers of last resort (POLRs), pursuant to PURA §39.202 and §39.106, respectively. The PTB REPs and POLRs began providing service on January 1, 2002. *See* PURA §39.102 and §39.202(a).

On May 17, 2001, the Federal Energy Regulatory Commission (FERC) issued an "Order Granting Declaratory Order and Denying Waiver of Regulations Implementing PURPA" in FERC Docket Nos. EL01-49-000 and EL01-60-000. The commission, in the FERC waiver docket, sought waiver from implementing PURPA upon the belief that an open, competitive market beginning on January 1, 2002 would render the PURPA power purchase obligations unnecessary in Texas. The FERC ruled that the commission must maintain its obligation to implement PURPA after unbundling and the commencement of competition and invited the commission to develop a market-oriented method of determining avoided costs consistent with PURPA and retail competition in Texas.

As part of the drafting process, commission staff conducted workshops in Austin to receive input from potentially affected persons on August 10, 2001, August 17, 2001, and March 13, 2002. Written comments from a number of interested parties were submitted in connection with these workshops. Although standard rulemaking procedures pursuant to Texas Government

Code, Chapter 2001 were used without incorporating formal negotiated rulemaking procedures, commission staff nevertheless attempted to find areas of agreement among the parties during these workshops. The commission considered the draft rule for publication at the December 19, 2001 open meeting.

The commission received written comments on the proposed amendment on January 25, 2002 from Dynegy Power Inc., Calpine Corporation, Gregory Power Partners, L.P., and Conoco Inc. (collectively Texas QFs), Texas Industrial Energy Consumers (TIEC), Reliant Resources, Incorporated (RRI), American Electric Power Service Company (AEPSC), Entergy Solutions Select Ltd. and Entergy Solutions Essentials Ltd. (Entergy REPs), TXU Company LP (TXU), First Choice Power, Inc. (First Choice), Office of Public Utility Counsel (OPUC), and Brazos Electric Power Cooperative, Inc. (Brazos). On February 4, 2002, the commission received reply comments from Texas QFs, TIEC, RRI, AEPSC, Entergy REPs, and TXU. On March 27, 2002, the commission received further comments on issues concerning the commission's jurisdiction from Texas QFs, TIEC, RRI, AEPSC, Entergy REPs, TXU, and OPUC. On April 1, 2002, the commission received reply comments on the matter of the commission's jurisdiction from Texas QFs, TIEC, RRI, AEPSC, Entergy REPs, TXU, and OPUC. Texas QFs filed supplemental comments on April 5, 2002 and RRI filed reply comments to Texas QFs' supplemental comments on April 11, 2002.

The majority of the parties' comments generally focused on the jurisdiction of the commission to establish avoided cost rates for the PTB REPs and POLRs, and the lack of clarity in the phrase "market price" as the definition of the rate that jurisdictional electric utilities must pay qualifying facilities. Additional comments were submitted concerning the impact of the proposed rule on the competitive market and several parties addressed alternatives for the commission's consideration. The commission first addresses these broad considerations and then the comments on specific rule language. Due to the overlapping nature of the issues, arguments and rationale for decisions in this introductory section shall be deemed as considered under the specific rule sections.

General comments on the competitive market

AEPSC indicated that the commission should seek to implement competitive solutions rather than regulatory solutions whenever possible. They contended that the proposed rule does not fully embrace competitive solutions and thus places PTB REPs at a disadvantage. AEPSC stated that the proposed rule will distort the competitive market. AEPSC interpreted PURPA to say that an "electric utility" is an entity that sells electricity in Texas; therefore, all REPs, power- generating companies, electrical cooperatives, municipal utilities and power marketers are subject to PURPA's obligations. Because the proposed rule only applies to PTB REPs and POLRs, it places an unfair burden on them. AEPSC argued that PURPA, as enacted in 1978, no longer has any relevance to the Electric Reliability Council of Texas (ERCOT) market that exists today. PURPA was meant to encourage generation when electric monopolies also had monopsony power over energy purchases. The introduction of wholesale electricity competition eliminated this market power. AEPSC further commented that QFs will have the same opportunity to sell their power as any other generating company and mandating that PTB REPs and POLRs take their puts amounts to preferential treatment for the QF. To the extent that these puts displace purchases of energy from different generating companies, this will result in an inefficient allocation of resources. AEPSC finally argued that if for some reason, PURPA is repealed or otherwise rendered obsolete, any rules adopted by the commission addressing PURPA obligations should also be repealed.

The commission agrees with AEPSC that it should seek competitive solutions rather than regulatory solutions whenever possible. However, as discussed below, the commission finds that it has an obligation to implement PURPA and, for reasons of administrative efficiency and market certainty, chooses to adopt this rule. The commission adopts this rule with some modification to the definition of "market price" in order to provide a definition that is the closest proxy as possible to a market price. The commission agrees that if PURPA is repealed or otherwise rendered obsolete, the rule should be reconsidered.

Rule alternatives - contested case process, self-implementation, or ERCOT

Entergy REPs and TXU reasoned that federal law, citing to PURPA and *FERC v. Mississippi*, 456 U.S. 742, 102 S.Ct. 2126 (1982), rehearing denied Sept. 9, 1982, 458 U.S. 1131, 103 S.Ct. 15, permits the States to opt out of PURPA implementation or to implement through contested hearings to adjudicate disputes involving QFs. Thus, Entergy REPs argued, it is unnecessary to implement PURPA through the creation of an administratively-determined avoided cost rate and unnecessary to adopt the proposed rule. On the other hand, Texas QFs strongly encouraged the commission to adopt a rule of general applicability to enforce PURPA in Texas. Texas QFs noted that addressing the issues raised herein on a case-by-case basis through the contested hearings process would waste parties' resources. Texas QFs supported a two-step process, whereby the commission adopts a transitional avoided cost pricing methodology that relies on reasonable proxy for prices until a liquid, real-time market develops. At such time, the commission could re-evaluate its policies and regulations.

Generally, RRI argued that the proposed rule is unnecessary for the commission to fulfill its duties under PURPA. RRI argued that the commission's instruction, at its December 19, 2001 open meeting, that the ERCOT electric utilities, as defined by PURPA, continue fulfilling their mandatory purchase obligations at market prices until such time that this proposed rule becomes finalized should be left standing as guidance. RRI contends that such guidance to all electric utilities in Texas, including ERCOT, is all that is necessary in order for the commission to fulfill its PURPA mandates. RRI argued that the proposed rule is unnecessary in order to meet PURPA requirements because the restructured ERCOT market provides more opportunities for qualifying facilities to sell their power than were envisioned at the time PURPA was enacted. Essentially, RRI argued that the intent of PURPA -- assurance of QF interconnection and other services from electric utilities and assurance of electric utilities' purchases of QF power -- has been outpaced by the opening of the wholesale and retail markets in ERCOT. Thus, the restructured, competitive wholesale and retail ERCOT market provides QFs in Texas far superior sales opportunities than that allowed under regulated markets.

TXU, AEPSC, RRI, and Entergy REPs commented on self-implementation of PURPA. TXU argued that PTB REPs and POLRs are non-regulated entities, but if required to implement PURPA, they should be allowed to self-implement. AEPSC suggested that the commission adopt a rule that encourages electric utilities to self-implement PURPA, particularly addressing PTB REPs and POLRs, if necessary. RRI stated that it will comply with its PURPA obligation to self-implement by entering

into mutually agreeable bilateral transactions for energy from QFs. Additionally, RRI argued that QFs could choose to exercise the PURPA put through bilateral agreements with any PURPA defined electric utility for as-available energy which reflects the market prices in the competitive power region. Consistent with this approach, RRI argued that the commission could endorse procedures that ensure economic efficiency of the competitive market. Entergy REPs commented that they support the position that REPs should self- implement their PURPA obligations and disagreed with the position that urges the commission to adopt the proposed rule amendments based on a finding of ratemaking authority over PTB REPs and POLRs.

Texas QFs argued that since January 1, 2002, REPs have self-implemented with consequences that most of the non-firm energy produced by 10,000 MegaWatt (MW) of QF energy in Texas has been shut-in since that date. Texas QFs argued that the "market price" definition will shut down cogeneration in Texas, in direct contravention of the goals of the U.S. Congress to produce energy efficiencies and fuel conservation through cogeneration, while decreasing reliance on fossil fuels. AEPSC objected to the Texas QFs' argument that their energy has been shut-in in ERCOT, noting there are many new market participants to whom QFs can now sell their power in addition to the traditional utilities.

Texas QFs' further commented that if the commission is required by PURPA to set an avoided cost rate for the PTB REPs and POLRs and fails to do so, it will be treating them as if they were non-jurisdictional electric utilities, which under PURPA §210(f)(2) are required to self-implement the FERC rules. The commission cannot assert jurisdiction over the PTB REPs and POLRs for purposes of implementing PURPA and then allow them to self-implement PURPA with respect to the avoided cost rate.

Texas QFs noted that the TXU and AEPSC REPs have already purported to illegally self- implement PURPA, and the rates they are using utilize a "lesser of" formula whereby QFs will never be paid more than the balancing energy price -- in direct contravention of the FERC's rejection of the balancing energy ancillary service administered by ERCOT. AEPSC took issue with the Texas QFs' comments that self-implementation is illegal, pointing out that the Texas QFs failed to cite a single law or statue violated by self-implementation in the absence of commission action.

The commission finds that it has the obligation to implement PURPA and, thus will do so through this rulemaking rather than allowing self-implementation. The commission's instruction at its December 19, 2001 open meeting that the ERCOT electric utilities, as defined by PURPA, continue fulfilling their mandatory purchase obligations at market prices until this proposed rule becomes finalized was meant to be strictly transitional. The commission disagrees with RRI that the temporary implementation directed at the December 19, 2001 open meeting is all that is necessary for the commission to fulfill its PURPA mandates and declines to keep such guidance in place as the method of PURPA implementation.

Federal law may allow the States to opt out of implementing PURPA; however, the States may choose to implement PURPA by several methods, including rulemaking. The commission chooses to continue implementation of PURPA through rulemaking. The commission agrees with Texas QFs that implementation on a case-by-case, contested proceeding hearing approach would waste parties' resources. Additionally, case-by-case determinations would severely tax the commission's resources in adjudicating such matters. The commission further agrees with Texas QFs that a two-step process whereby the commission adopts a transitional avoided cost pricing methodology that relies on a reasonable proxy for prices until a liquid, real-time market develops is reasonable and preferable. The commission finds that the best accommodation of as-available energy from a QF would be to have that energy delivered to a liquid spot market where QFs receive the market clearing price of energy at the time that they delivered. Relaxation or elimination of ERCOT's balanced schedule requirement would facilitate the development of a liquid spot market.

The second alternative proposed by AEPSC was for the commission to implement a market- based solution through ERCOT. AEPSC contended that if ERCOT were to establish a mechanism to accept all QF power, this would treat all electric providers fairly and energy would settle at an efficient price. OPUC suggested that ERCOT is better equipped to fulfill QF obligations. OPUC argued that ERCOT already procures and sells balancing energy. Should ERCOT relax its balancing schedule requirement, as it is considering, it would have the ability to auction QF power. However, TXU disagreed with AEPSC's and OPUC's alternative to implementing PURPA for PTB REPs and POLRs which is to require ERCOT to purchase all PURPA puts. TXU explained that ERCOT is not a PURPA utility which sells electric energy. Rather, ERCOT is an agent that acquires ancillary services on behalf of energy buyers and sellers in the ERCOT market. TXU is concerned that AEPSC's and OPUC's alternative would "completely destroy the paradigm of a limited-independent system operator that has been promoted by the market participants in ERCOT."

The commission finds that ERCOT cannot be required to purchase PURPA puts because ERCOT is not a PURPA utility, which is defined as an entity that sells electric energy. While ERCOT acts as an agent to acquire ancillary services on behalf of entities in the ERCOT market, it never takes title to the electric energy. Therefore, ERCOT is not a seller of electric energy, which is necessary to be defined as a PURPA utility obligated to purchase PURPA puts. The commission agrees with TXU and declines to impose PURPA put requirements on ERCOT.

Comments on jurisdiction

TXU, RRI, and AEPSC argued that the commission does not have ratemaking jurisdiction over PTB REPs and POLRs. In contrast, TIEC and Texas QFs commented that the commission has the jurisdiction to implement PURPA with respect to the PTB REPs and POLRs- electric utilities under federal law over which the commission has ratemaking authority.

RRI, TXU, and AEPSC argued that the Legislature clearly intended that all REPs, including PTB REPs and POLRs, be non-regulated entities. RRI asserted that as a result of restructuring in Texas and the redefinition of "electric utility" pursuant to Senate Bill 7, 76th Legislature, (SB 7), the commission does not have the type of ratemaking authority contemplated by PURPA over PTB REPs and POLRs. RRI disagreed that the commission's remaining ratemaking authority over REPs, under PURA, Chapter 39, as it pertains to the setting of the PTB fuel factor, is traditional cost of service ratemaking authority that would trigger the obligation to implement the PURPA mandates. Thus, RRI argued that the proposed rule should be rejected. TXU argued in a similar vein that the commission no longer has traditional cost of service ratemaking authority over PTB REPs and POLRs, but only has limited authority over rates charged through the fuel factor of the PTB and the authority to approve POLR rates. Likewise, AEPSC argued that although the commission sets the PTB

fuel factor and POLR REP's rate, this does not resemble the traditional ratemaking authority in place at the time PURPA was passed. Without jurisdiction, AEPSC suggested that the commission decline to adopt the proposed rule.

RRI argued that the proposed rule asserts that the commission's limited authority over POLRs and PTB REPs, for PURPA purposes, also subjects these entities to general ratemaking authority. Per RRI, the commission's authority would go so far as to create a new entity not mentioned in PURA -- PTB REP. RRI asserted that such action is not supported by, and is contrary to, PURA. RRI further asserted that the proposed rule ignores the fact that a single REP, as a single legal entity, can serve both PTB and non-PTB customers, as well as serve as a POLR. RRI stated that problematic consequences could ensue in that the proposed rule's stated limited commission authority over the PTB REP and/or POLR pricing would essentially become broader, general ratemaking authority over the entire entity, including the non-POLR and non- PTB REP that do not have PURPA obligations. In order to withstand the regulatory tension, RRI argued that the only alternative was for the proposed rule to require that separate entities perform separate functions. However, RRI asserted this is not required nor allowed by PURA, and such separation would impose burdensome and higher scheduling, accounting and settlement costs as reflected in PTB rates or the rates charged to POLR customers.

RRI and AEPSC further argued that no state law authority exists to provide the commission with the power to regulate PTB REPs and POLRs wholesale power purchases from QFs. RRI and AEPSC outlined the scope of the commission's power as a creature of the state, citing to the recent *PUC v. City Public Service Board*, 53 S.W.3rd 310 (Tex. 2001) which held that the commission only has those powers expressly conferred upon it by the Legislature and whatever powers that are reasonably necessary to fulfill its express functions or duties.

RRI, AEPSC, TXU, and Entergy REPs asserted that there is no express grant of authority upon the commission to direct how the PTB REPs and POLRs will purchase power. Further, RRI, AEPSC, and Entergy REPs argued that PURA §35.061, in and of itself, cannot provide the commission power to adopt and enforce rules encouraging power production. The authority must derive from other grants of state authority. The limited grants of authority in PURA, Chapter 39 over the narrow retail end of the REPs' business cannot be expanded to provide the commission power through PURA §35.061.

OPUC argued that some limited commission authority exists by inference and/or implication. OPUC asserted that the commission has the authority to ensure that ancillary services are reasonable pursuant to PURA §35.004(e). Additionally, OPUC points out that the commission has jurisdiction by implication by virtue of its oversight authority over the wholesale power markets contained in PURA §§39.157(a) (addressing market power abuses), 39.151(d) and (i) (oversight, review and delegation of authority to ERCOT), 39.252(d) and 39.262(a) (authority to review wholesale transactions that increase stranded costs).

AEPSC and RRI argued that authority may not be implied because it is not necessary in order for the commission to carry out its express duties. The Legislature through SB 7, and the commission through rules adoption, have developed a deregulated market that encourages economical production of electric energy from QFs and further satisfies PURA §35.061 without implying additional powers over PTB REPs and POLRs. Although the FERC addressed this issue in terms of whether to grant a waiver to the commission under federal law, the issue presented to the commission is one of state law -- whether the commission need imply authority over PTB REPs and POLRs to encourage QF power production.

Texas QFs argued that until January 1, 2007, PTB REPs must offer the PTB, which was initially established by the commission, including the fuel factor incorporated therein. In addition, the commission has the authority to adjust the PTB up to twice a year for changes in the prices of natural gas and purchased energy. The commission also has exclusive jurisdiction to approve rates charged by POLRs. Texas QFs argued that PURPA defines "State regulated electric utility" as "any electric utility with respect to which a State regulatory authority has ratemaking authority." Texas QFs further pointed to *FERC v. Mississippi* in arguing that this very broad definition was intended to encompass any electric utility for which a state regulatory authority exercises adjudicatory or ratemaking authority. Texas QFs argued that nothing in PURPA implies or suggests that "ratemaking authority" means "extensive ratemaking authority," "traditional ratemaking authority," "general authority to instigate rate-setting proceeding to revise the rates," or "traditional cost of service ratemaking." Texas QFs argued that if Congress had intended such general, comprehensive, cost of service ratemaking authority, it could have easily stated so.

Contrary to the utilities, Texas QFs further argued that the commission need not have state law authority to regulate PTB REPs and POLRs wholesale power purchases from QFs in order for it to be required to implement PURPA. Texas QFs and TIEC asserted that the obligation to implement PURPA comes from PURPA, even if the state Legislature has not conferred specific power to regulate the power purchases. Texas QFs indicated the lack of state authority conferred on the commission over wholesale QF power purchases from PTB REPs and POLRs is a non-issue. Notwithstanding, Texas QFs and TIEC argued that the commission has explicit and implicit state law authority under the mandate in PURA §35.061, which requires the commission to adopt and enforce rules to encourage the economical production of QF power.

Texas QFs further argued that, per *FERC v. Mississippi*, the commission has the obligation to implement PURPA if the commission has "state adjudicatory machinery" in place to enforce and entertain claims analogous to those granted by PURPA. Thus, if the commission has the power to adjudicate claims involving QFs and PTB REPs and POLRs, the commission must implement PURPA. Texas QFs further cited to provisions in PURPA in which procedural provisions exist that would provide the commission sufficient tools to implement PURPA consistent with the Court's instruction in *FERC v. Mississippi*. Given the adjudicative and procedural machinery together with the federal mandate to implement PURPA, the commission must enforce the FERC PURPA rules.

Finally, Texas QFs argued that implementation is not optional as Entergy REPs and TXU assert *FERC v. Mississippi* and *Printz v. United States*, 521 U.S. 898, 117 S.Ct. 2365 (1997) addressed PURPA, Titles I and III which pertain to permissive implementation of rate matters as opposed to Title II -- the PURPA provision subject of this rulemaking -- which addresses purchasing obligations. However, Texas QFs conceded that *FERC v. Mississippi* does not require a state commission to establish regulations. At a minimum, the state commission must only adjudicate and resolve disputes between electric utilities and QFs.

Citing to *FERC v. Mississippi* and *Printz*, Entergy REPs, AEPSC, and TXU argued in reply to Texas QFs that the federal government may not direct a state to carry out a federal program without the state's consent. AEPSC acknowledged that the federal government could require the observance of federal law in *adjudications*. AEPSC pointed out that the Court in *Printz* specifically stated that *FERC v. Mississippi* would have been decided differently had it been based on *non*-adjudicative implementation (i.e., rulemaking). Further, AEPSC asserted that such State claim adjudications must be analogous to the claims granted by PURPA or the PURPA claims adjudicated must be of the very type customarily engaged in by the state. The commission must have underlying subject matter jurisdiction to be allowed to conduct adjudications on PURPA issues (pricing, terms, and conditions of wholesale power transactions in a competitive market). Thus, the commission having "adjudicatory machinery" or procedural mechanisms in place is not sufficient to require the commission to adjudicate PURPA claims disputes between QFs and REPs because the commission does not have state law jurisdiction over price, terms, and conditions of wholesale power transactions. Similarly, Entergy REPs argued in its reply comments that state law jurisdiction to entertain claims analogous to those granted in PURPA is dubious.

Additionally, AEPSC concurred with RRI and TXU that if the commission finds that it has ratemaking authority over PTB REPs and POLRs, it should be limited to this rulemaking proceeding.

The commission agrees with Texas QFs and TIEC and finds that it has ratemaking authority, through PURA Chapter 39, over PTB REPs and POLRs and a federal mandate to implement PURPA QF power purchase obligations. Although, the ratemaking powers conferred upon the commission in PURA Chapter 39 may not be "plenary" or completely resemble "traditional" cost of service ratemaking authority over vertically integrated utilities, the commission agrees with Texas QFs that PURPA does not provide any indication of the scope of "ratemaking authority." The commission disagrees with RRI that the proposed rule broadens the commission's limited authority over POLRs and PTB REPs, for PURPA purposes, to general ratemaking authority. Further, the commission finds that it can institute regulations that implement power purchase obligations upon PTB REPs and POLRs without affecting REPs' PURPA obligations separate from commission imposed obligations.

The commission agrees with Texas QFs and TIEC that, together with the federal PURPA mandate and state ratemaking jurisdiction under PURA Chapter 39, the commission has underlying state authority to direct how PTB REPs and POLRs will purchase QF power through PURA §35.061 which mandates the commission to adopt and enforce rules to encourage the economical production of QF power. The commission further acknowledges that, pursuant to the FERC's May 17, 2001 "Order Granting Declaratory Order and Denying Waiver of Regulations Implementing PURPA" in FERC Docket Nos. EL01-49-000 and EL01-60-000, all unbundled REPs, transmission and distribution companies, and power generation companies are federally mandated under PURPA to take puts of energy from QFs. The commission does not agree with the parties who argue that the Legislature altered, through SB7, the commission's authority under PURA §35.061, with regards to REPs. Rather, the commission believes that the Legislature did not intend any alteration of the commission's powers to regulate QF power sale, including to REPs, by the passage of the PURA Chapter 39 provisions in SB 7. Thus, the commission finds that through the federal PURPA mandate to implement QF power purchase obligations, state ratemaking jurisdiction under PURA Chapter 39, the state mandate under PURA §35.061 to adopt and enforce rules to encourage economical production of QF power, and an endeavor to regulate consistent with federal law, the commission has jurisdiction to implement PURPA through this rulemaking. To the extent that TXU and AEPSC have concerns regarding the expansion of the commission's ratemaking jurisdiction beyond the authority conferred by PURA, the commission finds that its retail ratemaking jurisdiction in areas open to competition is currently limited to the price to beat charged by the affiliated REP and POLR rates .

Expanding the jurisdictional arguments, Texas QFs noted that the commission has ratemaking jurisdiction over the transmission and distribution utilities (TDUs) which, under federal law, retain the obligation to purchase PURPA energy. Similarly, OPUC noted that if commission staff's interpretation of its jurisdiction is correct -- that affiliated REPs (AREPs) and POLR's must accept QF puts because they are subject to rate making procedures -- then this jurisdiction should extend to affiliated power generation companies (APGCs). OPUC argued that the APGC should also be forced to accept QF puts, as it is also subject to the rate making process via the true-up proceeding. In response, TXU contended that the commission does not have jurisdiction to implement PURPA for TDUs or APGCs. TXU argued that while the true-up proceeding is an act of ratemaking authority over TDUs, the TDUs do not sell electric energy, and PURPA obligations only apply to entities that sell electric energy. TXU further explained that in the true-up preceding the ratemaking authority is over TDUs and not APGCs, as the commission only gathers information from the APGCs to adjust the rates of their affiliated TDUs. Therefore, TXU noted that APGCs must self-implement their PURPA obligations. AEPSC also disagreed with OPUC's conclusion that APGCs fell under commission jurisdiction. AEPSC noted that although APGC is subject to a true-up proceeding, the commission has no authority to change its rates.

The commission agrees with TXU and declines to impose PURPA put requirements on TDUs or APGCs. The commission agrees with TXU that the commission does not have jurisdiction to implement PURPA power purchases over APGCs. The commission continues to have jurisdiction over TDUs; however, the commission recognizes that PURPA power will not be put to TDUs.

First Choice objected to the possibility of being forced to accept supplies from non- competitive suppliers. Its complaint is based upon the fact that First Choice has a contract with its wholesale supplier that requires it to purchase most of its power from that supplier. It claims that other PTB REPs with generation affiliates can accommodate the requirement to purchase power from QFs, but that it cannot due to the lack of such an affiliate. First Choice cites proposed subsection (f)(5) as applying to utilities that do not own generation. TXU disagreed with First Choice's request for an exception for accepting and pricing power from QFs. TXU noted in their reply comments that under FERC case law, "PURPA electric utilities that are customers to full-requirements supply contracts are still obligated to purchase QF power, however their avoided costs are set at the avoided costs of their full-requirements suppliers." AEPSC agreed with First Choice that it is in a difficult position, but stated that First Choice's problem is not unique and that no AEPSC REP owns any generation either. AEPSC requested that First Choice not receive different treatment with regard to its PURPA obligations.

The commission finds that First Choice is in a difficult position, but agrees with AEPSC and TXU that it is not unique, and

therefore, should not receive different treatment with regard to its PURPA obligation. First Choice must comply with PURPA, as it meets the PURPA definition of "electric utility." Accordingly, the commission declines to grant First Choice's exception.

General comments on market based price and avoided cost

RRI, AEPSC, and TXU argued that if the commission is found to have jurisdiction, then a market-based pricing mechanism should be used. RRI argued that if the commission determines that a rule must be adopted, the proposed rule's definition of market price must be maintained in order to avoid conflicts with the PTB and to ensure that potential POLRs will bid to be POLRs. AEPSC stated that FERC has encouraged the commission to use market-based pricing.

Texas QFs argued that adopting the "market price" as proposed will give PTB REPs and POLRs free rein to implement rates which are nontransparent, calculated only after-the-fact, and highly subject to manipulation and gaming. However, AEPSC disagreed with the Texas QFs' assertion that self-implemented QF rates are subject to gaming, pointing out that such rates are heavily dependent on the market clearing price of energy (MCPE), which is independently determined by ERCOT. Entergy REPs, in initial and reply comments, commented that a specific definition for market price should not be included in the rule, and advocated in favor of restoring a general market standard that can be developed through self-implementation.

Texas QFs argued that as proposed, QFs will never know what the purchase price will be at the time of commitment. The Texas QFs argued that the proposed amendments fail to establish either a methodology for determining avoided costs, or an avoided cost rate, for purchases from QFs. Texas QFs contended that the payment methodology based on the market price of energy purchases proposed in subsection (i)(4), with the definition of market price in subsection (c)(8), is completely circular and fails to implement avoided cost pricing rates for purchases of QF energy. Texas QFs argued that the market is left without a transparent pricing mechanism for non-firm energy, depriving QFs of not only a reasonable estimate of the price they may be paid for their non-firm energy at the time they must schedule or deliver it, but also of the knowledge that payment will be received. Texas QFs commented that this fails to comply with the PURPA mandate to set avoided cost rates. Texas QFs argued that the definition of "market price" is too vague and should reflect the purchasing utility's highest (and least efficient) running costs or purchased power cost, i.e., the utilities "incremental costs" as required by PURPA. Finally, Texas QFs argued that granting the PTB REPs and POLRs the discretion to determine their own avoided costs constitutes an abdication by the commission of its PURPA responsibility to set avoided cost rates.

Texas QFs proposed the following definition of market price: "Market price for each 15- minute settlement interval is determined by multiplying the Heat Rate of the Marginal Unit times a fuel index. The Marginal Unit will be determined pursuant to the 'unit commitment' plan of the Qualified Scheduling Entity (QSE) for the PTB REP or POLR as submitted in that QSE's Day Ahead ERCOT schedule and Resource Plan. The Heat Rate will be based upon those determined to be appropriate proxies for the Marginal Unit as adopted for utilities' generating fleets in Section 25.381 of this Title. The fuel index will be an index appropriate for the type of generating unit on the margin (i.e. for gas units, it will be the Daily Gas Price)." Texas QFs reasoned that since there is no established day-ahead or real-time market (e.g. a "power exchange") in ERCOT, their proposal is based upon the heat rates and fuel prices of the capacity auction products contained in §25.381, relating to Capacity Auctions, as well as the day-ahead ERCOT schedule and Resource Plan of the PTB REP's or POLR's QSE. Texas QFs stated that their proposal, consistent with the FERC's invitation to determine avoided costs in a market- oriented manner, utilizes the PTB REP's or POLR's QSE's Day-Ahead unit commitment plan to determine the unit on the margin -- after the QSE has taken into account any possible day-ahead market opportunities. The units committed to run by the QSE should reflect a market price, because the QSE would not commit a unit to run if its incremental cost was not at or below market. Texas QFs noted that this still was not a published market price, but argued that it reflects what the QSE reasonably expects the energy market to be, and is therefore not subject to the same abuses and manipulations as a self-determined or MCPE market price. Once the unit on the margin is identified, Texas QFs argued, the proposal then utilizes capacity auction products as commission-approved market proxies for the marginal units determined by the "unit commitment" of the PTB REP's or POLR's QSE.

Texas QFs commented that their proposal offers the following benefits: it relies on the actual "unit commitment" schedule of the AREP's or POLR's QSE, so by definition it is a "market based" rate; it utilizes heat rates and fuel price indices already approved by the commission in the capacity auction rule; and because it is reasonable, there is no need for AREPs to file confidential, competitively-sensitive power purchase agreements with the commission to verify that they are correctly calculating their avoided costs.

TXU offered a list of comments regarding TIEC and the Texas QFs' proposed avoided cost methodologies. First, TXU opposed TIEC and the Texas QFs' proposed definition of "market price" indicating that it is irrelevant to entities that do not own generation and could require PTB REPs and POLRs to pay more than their individual avoided cost for QF power. TXU argued that PTB REPs and POLRs must purchase all of their power supplies so their avoided cost should be what they would have paid to purchase power if not for the purchase of QF power. TXU further commented that while fuel prices and heat rates may indirectly affect the price of power purchases by PTB REPs and POLRs, these factors do not necessarily account for all the costs that a particular PTB REP or POLR avoids with the purchase of QF power. Second, TXU commented that PTB REPs and POLRs will not always receive power from their APGCs and that pricing arrangements with suppliers will not always be based on incremental generating costs of their suppliers. Third, TXU argued that the methodology proposed by TIEC and Texas QFs would require PTB REPs and POLRs to pay more than their avoided costs for QF power by imposing firm pricing for non-firm products. TXU was also concerned that TIEC's and Texas QFs' methodology would create an arbitrage opportunity for QFs by establishing day-ahead firm avoided cost prices. Fourth, TXU contended that TIEC and Texas QFs' proposal to use the "marginal unit" in a PTB REP's or POLR's QSE-unit-dispatch to measure the REP's avoided cost is illogical for two reasons: (1) a PTB REP's or POLR's QSE may or may not represent generating units for dispatch; and (2) a QSE may represent multiple market participants that affect its dispatch decisions causing the QSE's marginal unit to be unrelated to the avoided cost of the PTB REP or POLR. Fifth, TXU addressed Texas QFs' initial comments that PTB REPs and POLRs self-implemented avoided cost will be after-the-fact. TXU explained that PURPA rules do not require that PURPA electric utilities calculate or state their avoided costs

before-the- fact. The PURPA rules require that electric utilities make available the data needed to estimate avoided costs. TXU also stated that no QFs have approached them to acquire any of the above- mentioned avoided cost data. Finally, TXU argued that TIEC and Texas QFs are seeking to apply unrelated proxy prices through the use of heat rates and fuel rates used in the capacity auction to determine avoided costs. TXU deemed that the proxies were created for the purpose of the capacity auction and therefore do not represent the actual operation of any particular utility or generating unit. TXU was concerned that by using the proxy prices as a measure of avoided cost, there is potential for PTB REPs and POLRs to pay more than their avoided cost for QF power which is in violation of PURPA and FERC rules.

RRI and AEPSC also disagreed and took issue with the Texas QFs definition of "marginal unit" which is based on the "unit commitment" plan of the QSE for the PTB REP or POLR. RRI asserted that it would require creation of a new QSE for the REP to separately schedule for PTB and/or POLR obligations, which is not required by PURA and which would impose additional costs on the REPs and their PTB and/or POLR customers. RRI further pointed out that the QFs do not offer any feasible method for determining the marginal unit from the unit commitment plan, which creates insurmountable problems. AEPSC argued that QSE's are not subject to the commission's jurisdiction and other market participants' QSEs are not required to disclose such information. AEPSC argued that disclosing its marginal heat rates will put a PGC at a competitive disadvantage, and a QSE may have more than one marginal unit.

RRI also took issue with the Texas QFs assertion that "the QSE would not commit a unit if its incremental cost was not at or below market." To the contrary, RRI stated a QSE may commit a unit even if its incremental cost is above market in order to have the units available to meet peak obligations, to participate in the ancillary service markets when the profit more than offsets the loss on energy sales, and the units may be forced by ERCOT to run for reactive power. Thus, RRI asserted that these given circumstances should not be considered "unit on the margin" for determining price that should be paid for QF energy deliveries. Ultimately, RRI argued that the Texas QFs proposal is unworkable, creates gaming opportunities and will result in higher costs to customers.

Additionally, RRI also pointed out that responsibility transfers are further complicated because QSEs do not have the capacity to dynamically adjust resources in its QSE to accommodate the PURPA put. Without the supply resources in its supply portfolio to directly control, the QSE used by the PTB REP and POLR would be exposed to the balancing energy market for QF deliveries. Under such scenario, the PTB REP or POLR would not be purchasing from the QF but rather would have purchased power that is sold to ERCOT via the balancing energy market. Thus, the definition of market price contained within the proposed rule would not correctly apply because the PTB REP or POLR would not have foregone power purchases due to the purchase from the QF. RRI asserted that only the QSEs are authorized under the ERCOT Protocols to schedule energy, so the PTB REPs and POLRs therefore will not be able to implement responsibility transfers on their own. Texas QFs agreed in reply comments, but stated it should be a simple matter for the PTB REPs and POLRs to require such capability in their contracts with their QSEs.

In reply comments, RRI generally agreed with OPUC that the Texas QFs' approach "encourages market manipulation and gaming which distort the market and raise power costs. The effect of such tariffs would be to develop a floor price for QF power, since the QF producer would always be free to sell at market rates when it is more beneficial to do so."

AEPSC commented that "market price" should be defined by the MCPE as determined by ERCOT. AEPSC stated that the rule's definition of "market price" is too vague and will result in commission imposed prices, rather than market-based prices. AEPSC argued that the proposed definition depends on which purchases were forgone by the REP and will lead to complaints by the QF. Texas QFs' objected to this proposal, noting that FERC found that ERCOT energy imbalance price neither constitutes a market price nor is it an adequate substitute for a QFs right under PURPA to sell to a purchasing utility at its avoided cost rates. Texas QFs commented on the FERC's statement that ERCOT ancillary purchases occur only after utilities have fully bilaterally arranged for and dispatched their own generation to their affiliated REPs. Texas QFs argued that the ERCOT imbalance service effectively is a "last stop" reliability service that is in no way related to a utility's incremental costs of generation. Texas QFs pointed out that the ERCOT imbalance market is "far smaller" than the short-term market as a whole. Texas QFs argued that due to its small size, lack of liquidity, and the fact that no market participant can purchase energy from the imbalance bid stack, it is not a market at all. Texas QFs argued that the price in that market has often been negative or zero.

AEPSC argued in its reply comments that FERC did not prohibit the use of MCPE for pricing purposes as the Texas QFs suggested. Rather, AEPSC argued that FERC did not address the issue of MCPE and simply ruled that the opportunity to sell ancillary services to ERCOT does not fulfill PURPA obligations. AEPSC further contended that the use of MCPE is a superior pricing method than that suggested by the Texas QFs and TIEC. AEPSC stated that formulaic pricing is inconsistent with market-based pricing and will hinder the development of a fair and competitive energy market. AEPSC also argued that the capacity auction heat rate is inaccurate, and therefore, inferior to MCPE. AEPSC also responded to the Texas QFs' statement that a negative or zero price for balancing energy indicates that the market is not working properly. AEPSC directly disagreed and stated that such prices indicate that the marginal benefit of additional power is negative. Therefore, a negative price for balancing energy is sometimes appropriate. AEPSC also noted that balancing energy prices are negative a small percentage of time. AEPSC countered the Texas QFs' argument that pricing after the fact is unacceptable by stating that it is necessitated by logistical constraints. AEPSC also stated that QFs could enter into bilateral contracts with purchasers if they demanded increased price certainty.

RRI also asserted that a PURPA defined electric utility operating in the competitive market place should not be obligated to pay more than market price, nor should it be obligated to take more than it is able to accept consistent with its other obligations. RRI stated that residual QF energy could be put to ERCOT in real-time which would exercise decremental balancing energy bids to accommodate such energy. Per RRI, the avoided cost for such placement would be the market-clearing price for balancing energy less any imbalance penalties. Alternatively, RRI argued that residual energy put to the PURPA defined electric utility would appear as resource imbalance and receive the market-clearing price less any imbalance penalties.

First Choice proposed that the price should be the balancing energy market-clearing price for the ERCOT congestion zone in

which the power is produced if it is required to take power from other QF suppliers. First Choice argued that any market price definition that comes out of this rulemaking needs to recognize this congestion zone distinction.

TXU proposed changing the defined term for subsection (c)(8) from "market price" to "power purchase avoided cost" to prevent confusion as the term market price has different meanings to different parties. AEPSC disagreed with TXU's suggestion, arguing that "market price" was more in the spirit of the FERC ruling and SB 7. On the other hand, Entergy REPs agreed with TXU's position that the proposed market price definition in the proposed rule does not actually define a market price, but instead refers to a "purchased power avoided cost." Entergy REPs did not believe that "purchased power avoided cost" would be a desirable formula for determining the price to be paid for as-available QF energy. Entergy REPs indicated that this market priced definition will often refer to REPs' costs under bilateral contracts, rather than market price. Given that the bilateral contract price may be above or below market at times, QFs may take advantage of making their as-available power sales at a price that will create arbitrage opportunities and ultimately distort the market and impose additional costs on the purchasing REP. TXU likewise commented that a PTB REP's or POLR's avoided cost for QF power could be based on a bilateral contract and not necessarily the market price for energy in a certain market. Entergy REPs recommended, if a definition is included, that the commission adhere to market standards that will treat all market participants equally and allow recovery of all costs associated with QF transactions. Entergy REPs further contended that the problems created by the use of the "purchased power avoided cost" formula will also be avoided through adherence of market price standards. TXU supported the proposed definition which utilizes individualized determination of avoided costs.

TXU further opposed Entergy REPs' proposal to defer the creation of an avoided cost methodology to compliance filings. TXU responded to Entergy REPs' concerns of arbitrage opportunities resulting from contract prices for power prices being revealed by explaining that most power purchase contracts are not fixed price contracts. TXU further explained that most power purchase contracts have prices determined by indices or costs that create uncertainty in the final dollar amount paid upon settlement which also creates uncertainty to prevent arbitrage opportunities.

The commission finds that it is appropriate to use a market-based pricing method for calculating avoided cost as opposed to a pricing method that is formulaic in determining avoided cost. Specifically, the commission finds that the closest approximation of a market price for avoided cost is the market-clearing balancing energy price for the ERCOT congestion zone in which the power is produced, minus any administrative costs, including an appropriate share of ERCOT-assessed penalties, and fees typically applied to power generators. The commission finds that this price most closely reflects avoided costs for the marginal unit of energy. To the extent that it is impossible for a REP to predict its load with 100% accuracy, each REP will have to either buy or sell a small amount of balancing energy. To the extent that QF energy displaces any of the REP's demand for balancing energy, the balancing energy price is the REP's avoided cost. Likewise, when a REP over-schedules with ERCOT, it receives the balancing energy price for its excess energy. This is true regardless of whether or not the REP would have overscheduled had it not fulfilled its PURPA obligations. Therefore, the commission finds that the balancing energy price is the most appropriate estimate of avoided cost.

The commission further finds that the balancing energy price should be used to determine avoided cost because it reduces the ability for any interested party to conduct in gaming. This is precisely because prices are not revealed until after the market has cleared. If the price was known *ex ante*, then it could act as either a price floor for QFs or a price ceiling for REPs. Either situation would encourage market manipulation. Furthermore, while PURPA mandates that a REP must accept energy from a QF, PURPA does not mandate that the QF must put to a particular REP. If the QF seeks a more certain price, the commission notes that it is free to seek other markets for its energy, such as entering into long-term bilateral contracts. The commission finds that it is also appropriate to explicitly permit a QF to agree to commit, on a day-ahead basis, to deliver firm power for the next day to a PTB REP. If a QF commits to deliver firm power on a day-ahead basis, the commission finds that rates for purchases of this power shall be based on prices for the day that the power was actually delivered as reported or published in an independent third party index or survey of trades of commonly traded power products in ERCOT, provided that the index or survey is ERCOT-specific and is based upon enough transactions to represent a liquid market, and the commitment to deliver shall correspond with the relevant hours of delivery of those products. The commission finds that this additional option is appropriate because it will provide another option for QFs while preventing the arbitrage opportunities identified by several of the commenters. Subsection (g)(3) has been added to prescribe the rates for purchases from a QF that has committed to delivering firm power on a day-ahead basis.

To the extent that the price of balancing energy is zero or negative, this does not negate a REP's PURPA obligations. Rather, a non-positive price indicates that the cost that the additional energy creates exceeds its benefits. The fact that the price may be zero or negative reflects the risk inherent in the current market structure and can be appropriate for non-firm energy. Finally, the use of such a price is revenue neutral to the REP. Thus, there should be no increase in costs to pass along to PTB REP or POLR customers.

The commission understands the argument made by the QFs and TIEC that granting them the opportunity to sell ancillary services, such as balancing energy, does not fulfill PURPA obligations. However, the commission finds that said parties are misinterpreting the decision made by FERC in its May 17, 2001 "Order Granting Declaratory Order and Denying Waiver of Regulations Implementing PURPA" in FERC Docket Nos. EL01-49-000 and EL01-60-000. The commission understands the FERC ruling to say that the opportunity to bid into the Independent System Operator run markets does not fulfill PURPA obligations. However, that is not the solution that the commission adopts. Rather, the commission finds that the PTB REPs and POLRs have an absolute obligation under PURPA to accept energy on behalf of the QF. The commission also finds that the balancing energy price is the appropriate determination of avoided cost and should be used to determine proper compensation for all energy supplied to the REP by the QF, absent any other private agreement reached by said parties.

Another issue of debate among the parties was the issue of requiring REPs to provide certain cost data. Texas QFs argued in the alternative, that if the circular definition of "market price" is adopted, the PTB REPs and POLRs should be required to provide their avoided cost data to the QFs, as set forth in 18 C.F.R. §292.302. In addition, the PTB REPs must be required to file all agreements under which they purchase energy, and QFs must be allowed to review such agreements to ensure that the

prices they are paid truly reflect the PTB REPs avoided cost of energy. RRI and AEPSC opposed the Texas QFs proposal that AREPs be required to file and make public, pursuant to 18 C.F.R. §292.302, certain detailed cost data. RRI asserted that after restructuring such requirement upon AREPs made little practical sense. RRI reasoned that prior to restructuring, a single entity controlled a generation and distribution "system" and that there were no competitive concerns. Post restructuring, AREPs no longer have such a system as contemplated by 18 C.F.R. §292.302, and thus is inapplicable. RRI surmised that AREPs likely now rely on competitive information in order to compete in the market, and an unequal filing requirement of such information will provide a competitive advantage for QFs to the detriment of AREPs. AEPSC argued that disclosure of such information would put said AREPs at a comparative disadvantage and stunt the growth of a competitive market. AEPSC also mentioned that the commission does not have the authority to make PTB REPs and POLRs disclose such information.

The commission finds that disclosure of REPs cost data is not necessary in view of the market-based pricing method adopted by the commission. Therefore, the commission declines to adopt Texas QFs proposal and does not require the production of cost data for the PTB REPs and POLRs.

Concern over POLR rates

Additionally, RRI, TXU, AEPSC, and OPUC commented that applying the rule to POLRs may raise additional concerns. RRI argued that the proposed rule would be particularly problematic for POLR service, to the point that it would act as a disincentive for REPs to bid to become POLRs because they would be subject to additional commission regulations beyond the POLR regulations. TXU also suggested that by classifying POLRs as state-regulated PURPA electric utilities that are subject to commission ratemaking authority, the commission will discourage REPs from applying for POLR status. TXU argued that while REPs, as electric selling entities, have the federal obligation to purchase QF power, REPs could be discouraged knowing that by achieving POLR status they give up their right to self-implement PURPA. AEPSC agreed with TXU and RRI that the proposed amendments will discourage REPs from attempting to become POLRs. AEPSC argued that the amendments would result in the QF favoring puts to the POLR REP, increase the uncertainty associated with providing such service, and lead to an increase in POLR rates.

OPUC made the point that POLR rates are already high because it is difficult for the POLR to predict its load, and therefore use hedging contracts to control the price of their inputs. Forcing the POLR to accept stochastic QF puts will only exacerbate this effect. OPUC stated that accepting QF power may result in an inefficient allocation of resources that could cause the costs associated with providing PTB and POLR services to increase. OPUC pleaded that the AREP not be allowed to use such an increase in costs to justify an increase in rates for PTB and POLR customers. OPUC further argued that prices for QF power should be determined through market-based methods, rather than through formulaic tariffs that set avoided cost. Using tariffs will have the effect of creating a price floor, and hence, encourage gaming. OPUC was concerned that the proposed rule does not mandate a market-based approach, but rather adopts it if and only if the QF agrees to such a method. In response to OPUC, TXU asserted that an appropriate avoided cost determination would nullify OPUC's concern that imposing the PURPA obligations on the PTB REPs and POLRs will drive up retail rates for residential and small commercial customers. TXU stated that an appropriate avoided cost determination will have no effect on PTB REPs' and POLRs' purchase power costs as the idea is for the PURPA electric utility to pay no more for QF power than it would have paid to otherwise obtain power.

The commission agrees with the concerns raised by OPUC, RRI, TXU, and AEPSC regarding the potential disincentives that this rule may have on REPs seeking to become POLRs. However, the commission finds that PURPA requires state commissions to implement PURPA for all entities over which the state commission has ratemaking authority, which this commission clearly does have with respect to POLRs. As a result, the commission declines to make this rule applicable to POLRs, and instead will address PURPA implementation for the POLR REPs on a case-by-case basis.

Comments on specific rule sections

§25.242(b) - Application

Brazos offered clarifying language to dismiss any misconceptions that even as a POLR, this section would not be applicable to an electric cooperative. Brazos explained that in PURA §41.053 an electric cooperative may designate itself or another entity to be the POLR within the electric cooperative's certificated service area. If the electric cooperative acts as the POLR, the electric cooperative must offer the customer the standard retail service package as approved by the electric cooperative's board of directors. Brazos proposed language to clarify the idea that the commission has no jurisdiction over the rates of electric cooperatives or municipalities. AEPSC noted that the comments made by Brazos that the proposed rule does not apply to cooperatives, even if they are acting as POLR, underscored its jurisdictional concerns.

For the reasons discussed above in *Concern over POLR rates*, the commission declines to implement PURPA over POLRs through this rulemaking. Thus, the commission does not believe it necessary to adopt Brazos' proposed clarification language. Notwithstanding, PURA Chapter 41 has altered the commission's jurisdiction over electric cooperatives much more comprehensively than that over REPs. The commission asserts jurisdiction over PTB REPs and POLRs in part based on the ratemaking authority it possesses through PURA Chapter 39. PURA Chapter 41 specifically places ratemaking authority over electric cooperatives in the hands of the cooperative's board of directors. The electric cooperative board of directors' ratemaking authority extends to electric cooperative POLRs pursuant to PURA §41.053(d).

§25.242(c) -Definitions

TXU offered amendments to make the definition of "cost of decremental energy" in subsection (c)(3) consistent with the use of the term in proposed subsection (i)(3). AEPSC commented that subsection (c)(3) should be clarified and specifically reference electric utilities, not simply utilities.

The commission declines to adopt the revisions recommended by TXU and AEPSC. The commission finds that the term decremental energy only exists in subsection (i)(3) which applies to electric utilities as defined in subsection (c)(4).

First Choice expressed concern about the usage of subsections (c)(1) and (c)(8) under the amended rule.

The commission acknowledges First Choice's concerns regarding amendments made to (c)(1) addressing the definition of

"avoided costs" and (c)(8) adding a definition of "market price." However, the commission adopts the definitions changes made based on its reasoning expressed in this preamble.

§25.242(f) - PTB REP and electric utility obligations

§25.242(f)(1) - Obligation to purchase from qualifying facilities

AEPSC commented that subsection (f)(1)(A)(i) and (ii) should be deleted. They are confusing and not applicable under the new ERCOT market structure.

The commission finds subsection (f)(1)(A)(i) and (ii) still applies to electric utilities as defined in subsection (c)(4). In the case of PTB REPs, it reiterates the point that delivery from the QF may be directly connected via the affiliated TDU to the facility or via transmission to PTB REPs located in other TDU service areas.

AEPSC commented that subsection (f)(1)(B) should be amended to specifically address the 90 day notice requirement for PTB REPs and POLRs.

The commission notes that many of the provisions in (f)(1)(B) relate to interconnection of the QF to the transmission and/or distribution grid and therefore, are not applicable to PTB REPs and POLRs. Additionally, for the reasons discussed above in *Concern over POLR rates*, the commission declines to implement PURPA over POLRs through this rulemaking. However, the commission agrees with AEPSC that similar timelines for finalizing agreements to purchase energy should be completed in a timely manner but does not agree that such agreements should take 90 days to reach given the prescriptive avoided cost methodology in this rule. The commission adds new subsection (f)(1)(C) to clarify this obligation.

§25.242(f)(2) Obligation to sell to qualifying facilities

AEPSC commented that subsection (f)(2) should be changed to only apply to POLR REPs. AEPSC argued that the commission does not have the authority to order any REP to provide service to a non-PTB customer. Alternatively, AEPSC suggested that the phrase "market based rates" be changed to "mutually agreed upon rates" to circumvent this problem.

TXU opposed TIEC's proposal to require PTB REPs and POLRs to sell energy and capacity to QFs at the REPs avoided cost plus reasonable administrative expenses. TXU contended that PURPA rules require a PURPA electric utility to sell to QFs at rates that are nondiscriminatory. TXU further argued that there is no precedent to use avoided costs to determine rates for energy and capacity sold to QFs. First Choice expressed concern about the lack of a definition for "market based rates" in subsection (f)(2).

Entergy REPs generally agreed with proposed subsection (f)(2), which governs sales to QFs. However, Entergy REPs stated that this section fails to explicitly provide for recovery of incidental administrative, billing and metering costs from QFs, and expressed preference that such provision be explicitly inserted in the subsection (f)(2). Nonetheless, Entergy REPs believed that full cost recovery is implicit in the market standard contained in the proposed rule. Entergy REPs, in reply comments, disagreed with TIEC's proposed pricing mechanism that would price sales to QFs at avoided costs plus an allowance for administrative costs, stating that such mechanism would not recover demand-related charges that are often associated with sales to QFs.

The commission finds that its jurisdiction is limited to POLR and PTB REPs. For the reasons discussed above in *Concern over POLR rates*, the commission declines to implement PURPA over POLRs through this rulemaking. The commission finds that the avoided cost for PTB REPs is the MCPE for the ERCOT congestion zone in which the power is produced, minus any administrative costs, including an appropriate share of ERCOT-assessed penalties, and fees typically applied to power generators. The commission finds, pursuant to PURPA, that QFs selling to non-POLR and non-PTB REPs should self-implement PURPA and set avoided cost at a mutually agreeable price and in a non-discriminatory manner. The commission also finds that it is not a commission requirement but a PURPA requirement that electric utilities sell standby, back up, and maintenance power to QFs at market rates. The commission further finds that this requirement has been harmonized by allowing these rates to be at the market value for these services.

§25.242(f)(4), Transmission to other electric utilities

AEPSC commented that subsection (f)(4) should be deleted because it is confusing and not applicable under the new ERCOT market structure.

The commission disagrees with AEPSC's comment that subsection 25.242(f)(4) should be deleted. QFs receiving or providing electricity from the grid will require transmission service. The obligations and rules of Subchapter I continue to govern transmission service irrespective of the new ERCOT market structure. The rules of Subchapter I were developed to support the new ERCOT market structure and the commission declines to delete this subsection.

§25.242(f)(5), PTB REP and POLR scheduling with qualifying facilities

TXU recommended deletion of proposed subsection (f)(5) as it regards the use of dynamic scheduling and responsibility transfers. TXU supported the initial comments of RRI and OPUC as well as echoed their comments that these forms of scheduling are not yet part of the ERCOT protocols. Further, TXU deemed that dynamic scheduling and responsibility transfers are not needed for QF puts and that static scheduling will accomplish QF puts leaving QFs exposed to the same financial imbalance concerns that apply to all PGCs in the new market. TXU also urged that the commission allow QFs and purchasing utilities to continue to work together to determine appropriate means for the technical transactions as it done in the past and not to use the rule to fix technical specifications that will likely change and evolve over time. Likewise, AEPSC urged the commission to reject Dynamic Resource Scheduling (DRS) because many different generators serve unpredictable loads and requiring DRS would give QFs an unfair advantage over other generators. AEPSC further contended that DRS will result in increased costs for PTB REPs and POLRs as certainty commands a price premium and that requiring dynamic scheduling would discourage efficient production of electricity. Furthermore, AEPSC argued it would require the REP to seek additional flexibility from its other suppliers. In this vein, AEPSC argued that subsection (f)(5), which requires PTB and POLR REPs to offer DRS, should be deleted.

Likewise, OPUC asked that the commission delete subsection (f)(5), requiring the availability of DRS. Although this service has been traditionally provided by integrated utilities, the new market structure does not support this because the generation and control areas no longer operate in a bundled manner.

RRI also argued that DRS is an optional service and is not necessary for QFs to deliver PURPA put energy nor are they required by ERCOT, although efforts are underway at ERCOT to define

how such scheduling might work. RRI recommended revisions to subsection (f)(5) to indicate the service is optional. RRI asserted that static scheduling is adequate and will be used by other PGCs on a regular basis. RRI argued that QFs should be subject to the same balancing energy market exposure taken by other PGCs in the ERCOT market, if scheduling is not met. RRI argued that QFs would be advantaged and have arbitrage opportunities should they be allowed to avoid such exposure. RRI also suggested that the proposed rule be clarified to indicate that responsibility transfers can only be undertaken by QSEs on behalf of REPs and QFs under the ERCOT Protocols, and that the ERCOT Protocols allow QSEs to offer responsibility transfers at their option under mutually agreeable contract terms.

Texas QFs and TIEC argued that it is imperative that DRS and/or responsibility transfers be utilized to accommodate PURPA energy, due to the intermittent, variable, non-firm and uncontrollable nature of the energy produced by QFs in excess of the needs of their steam hosts. TIEC also argued that the commission should require, through the rulemaking, that contracts between entities obligated to purchase PURPA power and QSEs make DRS available as quickly as possible if it not already available without "tying" such other services that a QF might be required to purchase.

The commission agrees with the Texas QFs and TIEC about DRS to the extent that it is desirable to better accommodate the fluctuating nature of their production. It does not agree with the recommendations that subsection (f)(5) be deleted. DRS should remain available as an option subject to the ability of the QF and its QSE to meet ERCOT's protocol requirements. The commission disagrees with the assertions that DRS would give the QFs an unfair competitive advantage because DRS is available to any energy supplier/QSE willing to utilize it.

§25.242(g) - Rates for purchases from a qualifying facility

§25.242(g)(2) - market based rates

OPUC stated that the term "just and reasonable operating expenses" is unclear and asked that the last sentence of subsection (g)(2) be deleted. OPUC claimed that this sentence could conflict with the PTB rule and create confusion. TXU, however, opposed OPUC's recommendation to delete the "just and reasonable operating expenses" provision from this subsection because it would be unfair not to allow PTB REPs and POLRs to recover costs from their customers.

AEPSC argued subsection (g)(2) should be deleted because the method of calculating avoided cost has not been fully determined and could result in the disclosure of a REP's cost information, putting it at a competitive disadvantage. AEPSC also commented that subsection (g)(2) contains a typographical error that should be corrected.

TXU suggested amending the second to last sentence of proposed subsection (g)(2) to create consistency between the subsection and PURPA rules at 18 C.F.R. §292.304(5).

TIEC supports the language proposed by Texas QFs as a modification of the definition of market price with the provision that if there is so much PURPA power available that more than one unit (or more than one type of unit) is avoided, then the heat rate and fuel index should be the average of the stack of all units avoided.

For the reasons discussed above in *Concern over POLR rates*, the commission declines to implement PURPA over POLRs through this rulemaking. The commission finds that this section relates to longer term purchases of energy and capacity and as such, in the context of PTB REPs should be fully negotiated between buyers and sellers in the competitive wholesale market. Alternatively, QFs may sell energy on a nonfirm, as available basis, and the commission finds that the MCPE is the appropriate estimate of avoided cost as defined in subsection (i)(4). Additionally, the term "just and reasonable operating expenses" does not apply in the context of a PTB REP as all of its purchases, including those from QFs, will be done at market based rates. Subsection (g)(2) has been modified to clarify that the term "utility" refers to still bundled electric utilities.

§25.242(i) - Tariffs setting out the methodologies for purchases of nonfirm power from a qualifying facility

AEPSC commented that subsection (i) should be clarified in the following manner: Paragraphs (1) and (3) apply to electric utilities and paragraphs (2) and (4) apply to PTB and POLR REPs. AEPSC sought clarification whether PTB REPs and POLRs must file actual tariffs or simply a description of the methodology that will be used to determine rates and whether PTB REPs and POLRs have the authority to choose which method will be used when either the QF agrees to the method or when the QF chooses the method.

§25.242(i)(2)

TXU proposes amending the term "market price" to read "power purchase avoided cost" to be consistent with TXU's proposal for change in proposed subsection (c)(8). AEPSC commented that subsection (i)(2) should be clarified that the period of sale is negotiated, as this section deals with average costs.

Entergy REPs, in reply comments, disagreed with TXU's suggestion that proposed subsection (i)(2) be revised to refer to average "purchased power avoided costs" rather than average market price. Entergy REPs reason, as with its general discussion concerning avoided costs determination, is that QFs will benefit from arbitrage opportunities that would ultimately distort market prices with added costs to REPs. The Entergy REPs also recommended deletion of any reference to "average market price" or TXU's suggested "purchased power avoided cost" because parties should be free to enter into contractual arrangements based on mutually agreeable terms and conditions.

For the reasons discussed above in *Concern over POLR rates*, the commission declines to implement PURPA over POLRs through this rulemaking. Concerning PTB REPs, the commission agrees with the concerns raised and has made corresponding revisions to the language in subsection (i)(2) and (i)(4) to address these concerns. Particularly, the commission has now revised subsection (i)(2) to specifically address the manner in which PTB REPs and QFs can mutually agree to the terms of rates for energy sales to QFs that are different than the market price as defined in subsection (c)(8). Nevertheless, the commission believes what the rate is called is irrelevant to the issue to the extent that both parties in question agree on the price for QF energy.

§25.242(i)(4)

OPUC recommended that subsection (i)(4) be amended such that "shall" replaces "may," and that the phrase "at the option of the qualifying facility" be deleted. TXU opposed OPUC's recommendation, arguing that it would be unfair not to allow PTB REPs and POLRs to recover costs from their customers.

The commission disagrees with OPUC's recommendation. However, in light of the above decision to revise subsection (i)(2) with regards to PTB REPs and QFs reaching mutually agreeable

terms for nonfirm sales to QFs, the commission has made corresponding changes to subsection (i)(4). The commission revises subsection (i)(4) to allow rates for purchases of nonfirm power to be based on the market price of energy (as defined in (c)(8) as MCPE) at the time of the sale to the QF, unless alternative arrangements have been made pursuant to subsection (i)(2).

§25.242(i)(5)

Texas QFs commented that they object to subsection (i)(5) which states that PTB REPS and POLRs must file with the commission a description of the methodology that will be used in calculating these rates for purchase, to the extent that it does not explicitly require commission approval for the methodology that will be used to calculate the individual utilities' avoided costs. Texas QFs stated that they want an opportunity for a contested case proceeding with commission approval of the ultimate methodology.

The commission deletes subsection (i)(5) given that it has adopted the MCPE as market prices. Because, through the adoption of the MCPE no methodology will need to be established, it is unnecessary for PTB REPs to make filings with the commission.

§25.242(j), Periods during which purchases not required

§25.242(j)(1)

TXU offered amended language throughout the subsection to carry the idea that in certain circumstances, electric utilities, PTB REPs and POLRs are permitted to decline to purchase QF power. TXU added that resource ramp limitations are not the only operational circumstances that could cause electric utilities, PTB REPs and POLRs to be in a position to pay more than their avoided costs for QF power.

AEPSC argued against subsection (j)(1), stating that the ability of a PTB REP or POLR to cease delivery because of operation concerns conflicts with the ability for the QF to obtain dynamic scheduling. There is no opportunity to provide notice under dynamic scheduling. AEPSC further argued that in addition to being an operational limitation, that ramp rate limitations may also be contractual limitations that a REP may have with its supplier. AEPSC stated that the commission should clarify that "utility" should refer to PTB REPs and POLRs and that the last sentence of the section does not clearly state the PTB REP's and POLR's obligations.

AEPSC commented that the commission's authority to verify operational limitations conflicts with the QF's ability to request dynamic scheduling in subsection (j)(3).

Additionally, RRI asserted that the proposed rule should be modified to ensure that the amount of the PURPA put energy scheduled or delivered to the PTB REP or POLR does not exceed the total load associated with those services. RRI recommended language to be added as subsection (j)(4), consistent with this recommendation.

The commission agrees with the parties that the term utility, in this rulemaking, should also apply to PTB REPs. It also agrees with RRI that language should be added to limit the amount of energy that may be put to a PTB REP to no more than the PTB REP needs to serve its load. If a QF chooses to use DRS, it does so with the understanding that it may have a different degree of notice available in case of curtailments due to operational concerns. The commission has made corresponding revisions to subsection (j)(4) consistent with the position that the amount of energy put may be limited.

§25.242(l), Interconnection costs

TXU proposed language to clarify that subsection (l) is addressing "electric" utility's Open Access Transmission Tariff.

The commission agrees with TXU and added "electric" in subsection (l) for clarity.

§25.242(m), System emergencies

AEPSC commented that subsection (m) it is not clear as to why PTB and POLR REPs cannot discontinue purchases and sales during a system emergency. The subsection should be amended or clarified.

The commission declines to make the revision suggested by AEPSC because the proposed rule did not recommend a change to this subsection. Therefore, no substantive change can be made to this provision at this time. However, the commission notes that a comparable provision exists in the FERC's rules relating to PURPA obligations at 18 C.F.R. §292.307.

25.242(n), Enforcement

AEPSC requested that the commission reject Texas QFs' suggestion that the commission evaluates via a contested case the compliance filings of each PTB and POLR REP. AEPSC argued that contested cases are not in the spirit of competition and that the commission should rely on market based prices instead.

In reply comments, Entergy REPs disagreed with Texas QFs' proposal that each implementation filing under the proposed rule be subject to review in a contested proceeding. Entergy REPs argued that affected parties have the ability under PURA and the commission's rules to initiate a complaint proceeding if disagreement exists with the implementation filing.

The commission believes Entergy's and AEPSC's concerns have been addressed by the deletion of subsection (i)(5).

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated, §11.002 (Vernon 1998 & Supplement 2002) (PURA), 16 U.S.C. §824a-3(f) (2000), and 18 C.F.R. Part 292 (2001) which grants the Public Utility Commission the authority to make and enforce rules necessary to protect customers of electric services consistent with the public interest; PURA §14.002 which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §35.061 which provides the commission with the authority to make and enforce rules to encourage the economical production of electric energy by qualifying facilities; and 16 U.S.C. §824a-3(f) (2000) and 18 C.F.R. Part 292 (2001), which require state regulatory authorities to implement federal Public Utility Regulatory Policies Act regulations addressing arrangements between certain entities that sell electric energy.

Cross reference to statutes: Public Utility Regulatory Act §§11.002, 14.002, and 35.061; 16 U.S.C. §824a-3; and 18 C.F.R. Part 292.

§25.242. Arrangements Between Qualifying Facilities and Electric Utilities.

(a) Purpose. The purpose of this section is to regulate the arrangements between qualifying facilities, retail electric providers with the price to beat obligation (PTB REPs), and electric utilities as required by federal and state law in a manner consistent with the development of a competitive wholesale power market.

(b) Application. This section shall apply to all PTB REPs, transmission and distribution utilities (TDUs), and electric utilities in Texas. This section shall not apply to municipal utilities, river authorities, or electric cooperatives.

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

(1) Avoided costs -- The incremental costs to a PTB REP, or electric utility of electric energy, which, but for the purchase from the qualifying facility or qualifying facilities, such PTB REP or electric utility would generate itself or purchase from another source.

(2) Back-up power -- Electric energy or capacity supplied to replace energy or capacity ordinarily generated by a qualifying facility's own generation equipment during an unscheduled outage of the qualifying facility.

(3) Cost of decremental energy -- The cost savings to a utility associated with the utility's ability to back-down some of its units or to avoid firing units, or to avoid purchases of power from another utility because of purchases of power from qualifying facilities.

(4) Electric utility -- For purposes of this section, an integrated investor-owned utility that has not unbundled in accordance with Public Utility Regulatory Act §39.051.

(5) Firm power -- From a qualifying facility, power or power-producing capacity that is available pursuant to a legally enforceable obligation for scheduled availability over a specified term.

(6) Host utility -- The utility with which the qualifying facility is directly interconnected.

(7) Maintenance power -- Electric energy or capacity supplied during scheduled outages of the qualifying facility.

(8) Market price -- The market-clearing price of energy (MCPE) in the balancing energy market for the Electric Reliability Council of Texas (ERCOT) congestion zone in which the power is produced, minus any administrative costs, including an appropriate share of ERCOT-assessed penalties and fees typically applied to power generators.

(9) Non-firm power from a qualifying facility -- Power provided under an arrangement that does not guarantee scheduled availability, but instead provides for delivery as available.

(10) Parallel operation -- A mode of operation which enables a qualifying facility to export automatically any electric capacity which is not consumed by the qualifying facility or the user of the qualifying facility's output. Parallel operation results in three possible states of operation at any point in time:

(A) The qualifying facility is generating an amount of capacity that is less than the customer's load. The customer is therefore a net consumer.

(B) The qualifying facility is generating an amount of capacity that is more than the customer's load. The customer is therefore a net producer.

(C) The qualifying facility is generating an amount of capacity that is equal to the customer's load. The customer is therefore neither a net producer nor a net consumer.

(11) Purchase -- The purchase of electric energy or capacity or both from a qualifying facility by a PTB REP or electric utility.

(12) Purchasing utility -- The electric utility that is purchasing a qualifying facility's capacity and/or energy.

(13) Quality of firmness of a qualifying facility's power -- The degree to which the capacity offered by the qualifying facility is an equivalent quality substitute for firm purchased power or an electric utility's own generation. At a minimum the following factors should be considered in determining quality of firmness:

(A) reliability of generation and interconnection;

(B) forced outage rate;

(C) availability during peak periods;

(D) the terms of any contract or other legally enforceable obligation, including, but not limited to, the duration of the obligation, performance guarantees, termination notice requirements, and sanctions for noncompliance;

(E) maintenance scheduling;

(F) availability for system emergencies, including the ability to separate the qualifying facility's load from its generation;

(G) the individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system;

(H) other dispatch characteristics;

(I) reliability of primary and secondary fuel supplies used by the qualifying facility; and

(J) impact on utility system stability.

(14) Retail electric provider with the price to beat obligation (PTB REP) -- A REP that makes available a PTB pursuant to PURA §39.202.

(15) Sale -- The sale of electric energy or capacity or both supplied to a qualifying facility.

(16) Supplementary power -- Electric energy or capacity regularly used by a qualifying facility in addition to that which the facility generates itself.

(17) System emergency -- A condition on a utility's system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

(18) Transmission and distribution utility (TDU) -- As defined in §25.5 of this title (relating to Definitions).

(d) Negotiation and filing of rates.

(1) Negotiated rates or terms. Nothing in this section shall:

(A) limit the authority of any PTB REP or electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differs from the rate or terms or conditions that would otherwise be required by this section; or

(B) affect the validity of any contract entered into between a qualifying facility and a PTB REP or electric utility for any purchase before the adoption of this section.

(2) Filing of rates. All rates for sales to qualifying facilities, contractual or otherwise, shall be contained in the schedule of rates of the electric utility filed with the commission.

(e) Availability of electric utility system cost data.

(1) Applicability. Paragraph (2) of this subsection applies to large electric utilities whose total sales of electric energy for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. Paragraph (3) of this subsection applies to all other electric utilities.

(2) Data request for large electric utilities. Large utilities shall file the following data:

(A) the estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of one, ten and 100 megawatts or not more than 10% of the system peak demand for systems of less than 1,000 megawatts. The avoided cost shall be stated on a cents-per-kilowatt-hour basis, during daily and seasonal peak and off- peak periods, by year, for the current calendar year and each of the next nine years.

(B) the electric utility's plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding nine years.

(C) for the current year and each of the next nine years, the estimated capacity costs at completion of the planned capacity additions and planned capacity purchases, on the basis of dollars-per-kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt-hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases. Such information shall be submitted in accordance with the Federal Energy Regulatory Commission Regulations, 18 Code of Federal Regulations, §292.302 and shall be sufficient for qualifying facilities to reasonably estimate the utility's avoided cost. Accompanying each filing pursuant to this rule shall be a detailed explanation of how the data was determined, including sources and assumptions employed.

(3) Special requirements for small electric utilities. Affected utilities shall, upon request:

(A) provide to an interested person comparable data to that required under paragraph (2) of this subsection to enable qualifying facilities to estimate the electric utility's avoided costs; or

(B) with regard to an electric utility that is legally obligated to obtain all its requirements for electric energy and capacity from another electric utility, provide to an interested person the data of its supplying utility and the rates at which it currently purchases such energy and capacity.

(4) Filing date. By February 15 each year, large electric utilities shall file with the commission and shall maintain for public inspection the data set forth in paragraph (2) of this subsection.

(f) PTB REP and electric utility obligations.

(1) Obligation to purchase from qualifying facilities.

(A) In accordance with this subsection and subsection (g) of this section, each PTB REP and electric utility shall purchase any energy that is made available from a qualifying facility:

(i) directly to the PTB REP or electric utility; or

(ii) indirectly to the PTB REP or electric utility in accordance with paragraph (4) of this subsection.

(B) Each electric utility shall purchase energy from a qualifying facility with a design capacity of 100 kilowatts or more within 90 days of being notified by the qualifying facility that such energy is or will be available, provided that the electric utility has sufficient interconnection facilities available. If an agreement to purchase energy is not reached within 90 days after the qualifying facility provides such notification, the agreement, if and when achieved, shall bear a retroactive effective date for the purchase of energy delivered to the electric utility correspondent with the 90th day following such notice. If the electric utility determines that adequate interconnection facilities are not available, the electric utility shall inform the qualifying facility within 30 days after being notified for distribution interconnection, or within 60 days for transmission interconnection, giving the qualifying facility a description of the additional facilities required as well as cost and schedule estimates for construction of such facilities. If an agreement to purchase energy is not reached upon completion of construction of the interconnection facilities or 90 days after notification by the qualifying facility that such energy is or will be available, the agreement, if and when achieved, shall bear a retroactive effective date for the purchase of energy delivered to the electric utility correspondent with the time of interconnection or the 90th day, whichever is later. Nothing in this subsection shall be construed in a manner that would preclude a qualifying facility from notifying and contracting for energy with a utility for sale of energy prior to 90 days before delivery of such energy.

(C) Each PTB REP shall purchase energy from a qualifying facility with a design capacity of 100 kilowatts or more within a timely fashion after being notified by the qualifying facility that such energy is or will be available.

(2) Obligation to sell to qualifying facilities. In accordance with subsection (k) of this section, each electric utility shall sell any energy and capacity requested to any qualifying facility located within the electric utility's service area. Each PTB REP shall also sell any energy requested to any qualifying facility; however, those sales shall be at market based rates. Nothing shall restrict the ability of any qualifying facility to purchase energy from any REP.

(3) Obligation to interconnect. The obligation of electric utilities and TDUs to interconnect with qualifying facilities is set forth in Subchapter I of this chapter (relating to Transmission and Distribution) with respect to qualifying facilities seeking to interconnect with TDUs in the ERCOT, and in the respective electric utility's Open Access Transmission Tariff for electric utilities in non-ERCOT power regions.

(4) Transmission to other electric utilities. Transmission service provided by an electric utility to a qualifying facility shall be governed by Subchapter I of this chapter.

(5) PTB REP and scheduling with qualifying facilities. A PTB REP shall use dynamic resource scheduling or responsibility transfer in ERCOT with any qualifying facility that requests such scheduling, as permitted by ERCOT. The PTB REP's cost of using dynamic resource scheduling or responsibility transfer attributable solely to purchases from qualifying facilities shall be charged to qualifying facilities that use such scheduling. If a qualifying facility uses static scheduling, the qualifying facility shall bear the costs for any imbalances resulting from the qualifying facility's failure to submit a schedule or to comply with the schedule.

(g) Rates for purchases from a qualifying facility.

(1) Rates for purchases of energy and capacity from any qualifying facility shall be just and reasonable to the customers of the electric utility or PTB REP and in the public interest, and shall not discriminate against qualifying cogeneration and small power production facilities.

(2) Rates for purchases of energy and capacity from any qualifying facility shall not exceed avoided cost. Rates for purchase shall be based upon a market-based determination of avoided costs over

the specific term of the contract or other legally enforceable obligation, the rates for such purchase do not violate this subsection if the rates for such purchase differ from avoided cost at the time of delivery. Payments which do not exceed avoided cost shall be found to be just and reasonable operating expenses of the electric utility.

(3) A QF may agree to commit, on a day-ahead basis, to deliver firm power for the next day to a PTB REP. Rates for purchase of this power shall be based on prices for the day that the power was actually delivered as reported or published in an independent third party index or survey of trades of commonly traded power products in ERCOT, provided that the index or survey is ERCOT-specific and is based upon enough transactions to represent a liquid market, and the commitment to deliver shall correspond with the relevant hours of delivery of those products.

(h) Standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less.

(1) There shall be included in the tariffs of each electric utility standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. The rates for purchases under this paragraph:

(A) shall be consistent with subsection (g) of this section, as it concerns purchases from a qualifying facility;

(B) shall consider the aggregate capacity value provided by multiple qualifying facilities with a design capacity of 100 kilowatts or less; and

(C) may differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.

(2) Terms and conditions unique to qualifying facilities with a design capacity of 100 kilowatts or less such as metering arrangements, safety equipment requirements, liability for injury or equipment damage, access to equipment and additional administrative costs, if any, shall be included in a standard tariff.

(3) The standard tariff shall offer at least the following options:

(A) parallel operation with interconnection through a single meter that measures net consumption;

(i) net consumption for a given billing period shall be billed in accordance with the standard tariff applicable to the customer class to which the user of the qualifying facility's output belongs;

(ii) net production will not be metered or purchased by the utility and therefore there will be no additional customer charge imposed on the qualifying facility;

(B) parallel operation with interconnection through two meters with one measuring net consumption and the other measuring net production;

(i) net consumption for a given billing period shall be billed in accordance with the standard tariff applicable to the customer class to which the user of the qualifying facility's output belongs;

(ii) net production for a given billing period shall be purchased at the standard rate provided for in paragraph (1)(A) and (B) of this subsection;

(C) interconnection through two meters with one measuring all consumption by the customer and the other measuring all production by the qualifying facility;

(i) all consumption by the customer for a given billing period shall be billed in accordance with the standard tariff applicable to the customer class to which the customer would belong in the absence of the qualifying facility;

(ii) all production by the qualifying facility for a given billing period shall be purchased at the standard rate provided for in paragraph (1)(A) and (B) of this subsection.

(4) In addition, each electric utility shall offer qualifying facilities using renewable resources with an aggregate design capacity of 50 kilowatts or less the option of interconnecting through a single meter that runs forward and backward.

(A) Any consumption for a given billing period shall be billed in accordance with the standard tariff applicable to the customer class to which the user of the qualifying facility's output belongs.

(B) Any production for a given billing period shall be purchased at the standard rate provided for in paragraph (1)(A) of this subsection.

(5) Interconnection requirements necessary to permit interconnected operations between the qualifying facility and the utility and the costs associated with such requirements shall be dealt with in a manner consistent with Subchapter I of this chapter.

(6) The rates, terms and conditions contained in the standard tariff for qualifying facilities with a design capacity of 100 kilowatts or less shall be subject to review and revision by the commission.

(7) Requirements for the provision of insurance under this subsection shall be of a type commonly available from insurance carriers in the region of the state where the customer is located and for the classification to which the customer would belong in the absence of the qualifying facility. An enhancement to a standard homeowner's or farm and ranch owner's policy containing adequate liability coverage and having the effect of adding the electric utility as an additional insured or named insured is one means of satisfying the requirements of this paragraph. Such policies shall in each instance be on a form approved or promulgated by the Texas Department of Insurance and issued by a property or casualty insurer licensed to do business in the State of Texas.

(i) Tariffs setting out the methodologies for purchases of nonfirm power from a qualifying facility. Tariffs setting out the methodologies for purchases of nonfirm power from a qualifying facility shall be filed with the commission based on one of the following approaches:

(1) Rates for purchases of nonfirm power may, by agreement of both the electric utility and the qualifying facility, be based on the utility's average avoided energy costs. Administrative, billing, and metering costs shall be recovered through a monthly customer charge to the qualifying facility.

(2) PTB REPs and QFs may mutually agree to rates for purchases of nonfirm power that differ from the rates described in paragraph (4) of this subsection. Any such agreements shall be made on a nondiscriminatory basis. Such agreements may include provisions to prevent the potential for arbitrage.

(3) Rates for purchases of nonfirm power may, at the option of the qualifying facility, be based on the full cost at the time of delivery of decremental energy that would have been incurred by the electric utility had the qualifying facility not been in operation.

(A) The following factors should be considered in the calculation of the cost of decremental energy:

(i) fuel costs;

(ii) variable operating and maintenance costs;

(iii) line losses;

(iv) heat rates;

(v) cost of purchases from other sources;

(vi) other energy-related costs;

(vii) capacity costs, if, as a class, qualifying facilities providing nonfirm energy offer some predictable capacity; and

(viii) for short term energy purchases, the time and quantity of energy furnished.

(B) If practical, the avoided cost should be determined by calculating by time period, using the utility's economic dispatch model (or comparable methodology), the difference between the cost of the total energy furnished by both the qualifying facility and the utility, computed as though the energy furnished by the qualifying facility had been furnished by the utility, and the actual cost of energy furnished by the utility.

(C) The economic dispatch model should take into consideration the following factors:

(i) fuel costs;

(ii) variable operating and maintenance costs;

(iii) line losses;

(iv) heat rates;

(v) purchased power opportunity;

(vi) system stability; and

(vii) operating characteristics.

(D) Time periods should be hourly if the utility has an automated economic dispatch model available; otherwise the shortest reasonable time period for which costs can be determined should be used.

(E) Administrative, billing, and metering costs shall be recovered through a monthly customer charge to the qualifying facility.

(4) Rates for purchases of nonfirm power shall be based on the market price of energy at the time of sale from the QF unless other arrangements have been made in accordance with paragraph (2) of this subsection. Administrative, billing, and metering costs shall be recovered through a monthly customer charge to the qualifying facility. Such agreements may include provisions to prevent the potential for arbitrage.

(j) Periods during which purchases not required.

(1) Any PTB REP or electric utility which gives notice to each affected qualifying facility in time for the qualifying facility to cease delivery of energy or capacity to the PTB REP, or electric utility will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, including resource ramp rate limitations that could cause imbalances or the amount of energy put by the QF exceeds the PTB REP's load, purchases from qualifying facilities will result in costs greater than those which the electric utility would incur if it did not make such purchases, but instead generated an equivalent amount of energy itself, provided, however, that this subsection does not override contractual obligations of the PTB REP or electric utility to purchase from a qualifying facility.

(2) Any PTB REP or electric utility which fails to give notice to each affected qualifying facility in time for the qualifying facility to cease the delivery of energy or capacity to the PTB REP or electric utility will be required to pay the same rate for such purchase of energy or capacity as would be required had the period of greater costs not occurred.

(3) A claim by PTB REP or an electric utility that such a period has occurred or will occur is subject to such verification by the commission either before or after the occurrence.

(k) Rates for sales to qualifying facilities.

(1) General rules.

(A) Rates for sales to qualifying facilities shall be just and reasonable and in the public interest, and shall not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the electric utility. Rates for standby or other supplementary service shall be based on the amount of capacity contracted for between the qualifying facility and the electric utility, and shall not penalize electric utilities that also purchase power from qualifying facilities. The need for and cost responsibility for special equipment or system modifications shall be determined by application of Subchapter I of this chapter.

(B) Rates for sales that are based on accurate data and consistent system-wide costing principles shall not be considered to discriminate against any qualifying facility to the extent that such rates apply to the electric utility's other customers with similar load or other cost-related characteristics.

(2) Additional services to be provided to qualifying facilities.

(A) Upon request of a qualifying facility within its service area, each electric utility shall provide:

(i) supplementary power;

(ii) back-up power;

(iii) maintenance power; and

(iv) interruptible power.

(B) An electric utility shall not be required to provide supplementary power, back-up power, or maintenance power to a qualifying facility if the commission finds that provision of such power will:

(i) impair the electric utility's ability to render adequate service to its customers; or

(ii) place an undue burden on the electric utility.

(3) Rates for sales of back-up power and maintenance power. The rate for sales of back-up power or maintenance power:

(A) shall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak, or both; and

(B) shall take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with scheduled outages of the utility's facilities.

(l) Interconnection costs. The establishment and reimbursement of interconnection costs are set forth in Subchapter I of this chapter with respect to qualifying facilities seeking to interconnect with TDUs in ERCOT, and in the respective electric utility's Open Access Transmission Tariff for electric utilities in non-ERCOT power regions.

(m) System emergencies.

(1) Qualifying facility obligation to provide power during system emergencies. A qualifying facility shall be required to provide

energy or capacity to an electric utility during a system emergency only to the extent:

(A) provided by agreement between such qualifying facility and electric utility; or

(B) ordered under the Federal Power Act, §202(c).

(2) Discontinuance of purchases and sales during system emergencies. During any system emergency, an electric utility may discontinue:

(A) purchases from a qualifying facility if such purchases would contribute to such emergency; and

(B) sales to a qualifying facility, provided that such discontinuance is on a nondiscriminatory basis.

(n) Enforcement. A proceeding to resolve a dispute between an electric utility, PTB REP and a qualifying facility arising under this section may be instituted by filing of a petition with the commission. Electric utilities, PTB REPs, and qualifying facilities are encouraged to engage in alternative dispute resolution prior to the filing of a complaint.

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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SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 3. CAPACITY AUCTION

16 TAC §25.381

The Public Utility Commission of Texas (commission) adopts an amendment to §25.381 relating to Capacity Auctions with changes to the proposed text as published in the January 18, 2002 *Texas Register* (27 TexReg 425). The amendment implements the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.153 (Vernon 1998, Supplement 2002), as it relates to the establishment of procedures by which affected affiliated power generation companies (PGCs) will auction entitlements to 15% of their Texas jurisdictional installed generation capacity. PURA Chapter 39, Restructuring of Electric Utility Industry, became effective September 1, 1999, as part of Senate Bill 7, 76th Legislative Session (SB 7), to effectuate a competitive retail electric market that allows each retail customer to choose its provider of electricity and encourages full and fair competition among all providers of electricity. This amendment is adopted under Project Number 24492.

The commission received comments on the proposed amendment from Alkera, Inc. (Alkera); Central Power and Light Company (CPL), West Texas Utilities Company (WTU), and Southwestern Electric Power Company (SWEPCO) (CPL, WTU, and SWEPCO collectively known as AEP); Coral Power, L.L.C. (Coral); Dynegy Inc. (Dynegy); Tenaska Power Services Company (Tenaska); Entergy Gulf States, Inc. (EGSI), Entergy Solutions Ltd., Entergy Solutions Select Ltd., Entergy Solutions Essentials, Ltd. (collectively the Entergy REPs); Green Mountain Energy Company (GMEC); New Power Company (New Power); Office of Public Utility Counsel (OPUC); Steering Committee of Cities Served by TXU (Cities); Reliant Energy, Inc. (REI); Reliant Resources, Inc. (RRI); Southwestern Public Service Company (SPS); TXU Generation Company LP (TXUG), and TXU Energy Trading Company LP (TXUE) (TXUG and TXUE collectively referred to here as TXU).

Comments on specific questions posed in the preamble:

Question Number 1: In regards to ongoing creditworthiness:

a. Should a seller be allowed to require additional security from a purchaser, if the creditworthiness or financial responsibility of the purchaser becomes unsatisfactory, in the reasonable judgement of the seller, at any time during which the entitlement is in effect?

Sellers of entitlements (AEP, EGSI, REI, and TXU) supported allowing additional security to be required from a buyer. Entergy REPs, OPUC, and Cities supported the position of the sellers, but expressed the same concerns that led other parties to oppose the additional security. Coral, Dynegy, Tenaska, GMEC, New Power, and RRI opposed allowing additional security to be required mainly because they felt that allowing additional security "in the reasonable judgement of the seller" gave too much subjective power to the seller and would permit discrimination. AEP proposed new language to allow an affiliate PGC to request additional performance assurance if the entitlement holder's creditworthiness becomes unsatisfactory. EGSI added that it is appropriate to request a reasonable amount of additional financial security from buyers to ensure that they are able to meet their continuing obligation with respect to purchased products. TXU and REI's comments closely resembled the sentiments of AEP and EGSI with the addition that REI believed that a seller would not invoke the "reasonable judgement" provision arbitrarily, because if a seller did not act reasonably it would be in breach of its agreement and would be liable to the buyer for damages.

The Entergy REPs stated that additional security from the purchaser should be allowed if the financial security of the purchaser materially changes, as long as the criteria for requiring additional security are clearly identified in the seller's credit requirements and there are clear parameters for exercising "reasonable judgement." OPUC and Cities echoed this view but felt that "reasonable judgement" should be quantified by an appropriate formula to prevent abuse by sellers. Coral, Dynegy, and Tenaska stated that sellers should not be permitted to demand unlimited credit assurance without defined and definitive causes, such as a credit downgrade. GMEC and New Power added that the repercussions of leaving the decision to the affiliated PGC could be severely detrimental to the market for a number of reasons, including placing parties on unequal footing in trades. RRI commented that the "reasonable judgement" provision is arbitrary and that even objective standards should prevent an overdependence on input from one source of credit information.

In reply comments, AEP and TXU stated that parties that fear the affiliated PGC could unilaterally impose onerous credit requirements upon the other party have not recognized that there would be significant constraints on the PGC's actions. The EEI/NEMA contract itself would deem an unreasonable request for assurances as a breach of contract, triggering significant penalties. Coral argued that the additional credit provision is not accepted

by Coral in other commercial transactions, nor do they believe it is accepted by the majority of purchasers in such transactions. Coral also noted that legal remedies for an unwarranted demand for additional security are problematic, because litigation is costly and slow. EGSI explained that sellers are accountable to the commission and are not likely to abuse the credit provision by treating the same counterparties differently in the capacity auction than they would in bilateral market transactions. RRI commented that it was concerned that "reasonable" judgements and additional credit requirements imposed unexpectedly and without objective standards would increase credit related financial burdens. RRI contended that credit requirements should be specific, fair, and not create unnecessary barriers to capacity auction participation. TXU argued that the right of a seller to ask for credit assurances is not only standard practice in the energy industry, it is a vital right considering that capacity auction sellers are required to offer unsecured credit to potential buyers pursuant to the standards set forth in the rule. TXU stated that it is not true that capacity auction sellers could use the credit assurances provision at their whim to keep certain non-investment grade entities out of the auctions.

b. What are the positives and negatives associated with allowing additional security to be required from the purchaser?

AEP stated that the positives would be allowing the risk of nonperformance to be allocated directly to the party causing the risk. The Entergy REPs commented that a positive would be that the additional security would provide stability to the auction process and would mitigate the risk of default by the purchaser. REI opined that allowing additional security provides the seller necessary protection against changed circumstances during the entitlement period. TXU commented that without the additional security, sellers could be left with significant unpaid capacity auction debt or pennies on the dollar for unsecured capacity auction debts. This would defeat the purpose of the capacity auctions and endanger the financial standing of capacity auction sellers. GMEC commented that potential negatives included the facts that asymmetry of this sort creates an opportunity for the affiliated PGC to distort the number of bidders and the type of bidders, and that allowing the affiliated PGC to increase the deposit requirement does not have equal impact on bidders. An additional dollar of escrow or surety bond affects a company more than an additional dollar applied against a credit rating, which GMEC states has potential liquidity implications for the auctions. New Power added that allowing sellers to exercise their "reasonable judgement" might allow sellers to squeeze out certain REPs and in effect discriminate against companies that do not have an investment credit rating, or discriminate for other arbitrary and capricious reasons. RRI stated that the provision could serve as a barrier to entry for the new market participants and lessen the interest of those currently active in the capacity auction process.

The commission finds arguments on both sides of this issue persuasive. The commission agrees with capacity auction sellers that they are required to participate in the capacity auctions and that there is risk that the purchasers of capacity auction entitlements will not be able to pay for those entitlements due to circumstances that change after the auction is held. However, the commission also agrees with the purchasers of capacity auction entitlements that allowing sellers the ability to require additional credit at any time for any reason is too much subjective power to grant to the sellers, as it could lend itself to discrimination based on current or prior affiliations.

The commission concludes that capacity auction sellers should be allowed to require additional security from entitlement purchasers only if the financial condition of the purchaser materially changes after the auction, and if the criteria for determining a material change and the form of additional security are clearly identified in the seller's credit requirement provisions of the Agreement. Language has been added to the rule to reflect this decision.

c. Should an additional security provision be in place for the seller as well as the purchaser?

The parties were again split on this issue. AEP, EGSI, Entergy REPs, and REI were against the purchaser being able to require additional security from the seller. Coral, Dynegy, Tenaska, GMEC, New Power, and RRI, as potential buyers, opined that purchasers should be allowed to request additional security from sellers; OPUC and Cities supported this position. The position generally echoed by Coral, Dynegy, Tenaska, GMEC, New Power, OPUC, Cities, and RRI was that buyers and sellers should be afforded equal, symmetrical credit protections through objective credit standards. In their view, the buyer is subject to as much risk as the seller in these auctions; therefore, symmetry of deposit requirements is appropriate. Coral, Dynegy, and Tenaska also pointed out that entitlement holders face a significant credit risk. In the short run, buyers of entitlements bear the risk that generation requested pursuant to an entitlement will be curtailed in the middle of a schedule resulting in the entitlement holder being liable for the imbalance charges assessed by the Electric Reliability Council of Texas (ERCOT). In the long run, the capacity purchased could be unavailable for a prolonged period. In addition to not receiving the service that it has paid for, the entitlement holder would also be unable to meet its commitments to sell electricity to its customers without purchasing that power from other sources. In addition, GMEC deemed that the draft language seems equipped to protect the seller from buyer's default in payment, but needs to add symmetry to the transaction by giving protection to buyers from the financial impact of seller's default. GMEC proposed language that would hold the affiliated PGC responsible for any assessments from ERCOT for imbalanced schedules, failure to procure ancillary services, or any other charges due to the failure of the affiliated PGC to fulfill the auctioned obligation.

AEP, EGSI, Entergy REPs, and REI stated that no additional security should be given to the buyer as the sellers have a legal obligation to perform and buyers will weigh the perceived risk into their bids.

In reply comments, Coral, Dynegy, and Tenaska noted that sellers argue that if buyers are in any way dissatisfied with the terms or bid prices they can simply choose to not participate in the capacity auctions. Coral, Dynegy, and Tenaska contended that this is the very reason the rule should require bilateral credit. The absence of symmetrical, bilateral credit protection in the capacity auctions would provide a significant incentive for buyers to choose products available in the commercial market over those available in the capacity auctions. Coral, Dynegy, and Tenaska commented that certain parties argue that buyers have no risk because sellers' regulatory compliance will assure performance of their obligations. However, if a credit event prevents a seller from generating, no matter how badly that seller may wish to comply with the commission's regulations, it will be unable to do so. Regulatory compliance will take place only when sellers

are financially and economically able to comply. In terms of implementation, Coral, Dynegy, and Tenaska explained that stakeholders would select the cover sheet options such that credit protections afforded only to sellers would be made applicable to both sellers and buyers. They propose that the same ERCOT Qualified Scheduling Entity (QSE) credit standards that have been used to quantify the security requirements applicable to buyers also be made applicable to sellers. Unrated sellers may have to obtain guarantees from a rated parent or affiliate if they do not meet minimum financial requirements. This would not expose them to additional expense.

While the commission is sympathetic to the plight of buyers regarding the risk of a seller's default, the commission declines to impose the additional cost associated with meeting bilateral credit requirements on the capacity auction sellers. However, the commission finds that an entitlement holder shall be allowed to request credit assurances from the entitlement seller in the event of a downgrade event for the entitlement seller which would put the entitlement holder at risk. If a downgrade event occurs, the entitlement holder may request credit assurance from the seller in a commercially reasonable manner. If the seller does not provide the credit assurance within three business days of receipt of notice, then the entitlement holder shall have the right to suspend performance as prescribed in the Agreement (and thus suspend payments for energy not yet delivered) and may ultimately terminate the Agreement after the suspension period. Language reflecting these decisions has been incorporated into the rule. A downgrade event for the seller shall be structured, on the cover sheet of the Agreement, in the same fashion as is currently employed for the entitlement holder, except that the downgrade event is defined as any lowering of the seller's credit rating, and not below a particular threshold.

Question Number 2: In regards to auction mechanics:

a. Should non-Electric Reliability Council of Texas, Inc. (ERCOT) and non-stranded cost companies be allowed to have different auction processes or mechanics from other companies?

AEP strongly supported the ability of non-stranded cost companies to devise commercially reasonable auction processes and products. AEP added that for non-stranded cost companies, the commission's sole goal should be to ensure that the affiliated PGC has designed its auction process to sell 15% of the Texas jurisdictional installed generation capacity. AEP argued that the proceeds from the capacity auctions for such companies go directly to their bottom line and the commission should grant such companies the ability to structure the auctions in a way that fits management's view of the market. In its reply comments, AEP clarified that all it is seeking is an explicit recognition that there is a difference between the amount of regulatory review required for stranded cost companies as opposed to non-stranded cost companies.

Coral, Dynegy, Tenaska, EGSI, OPUC, Cities, RRI, and TXU were generally opposed to allowing this type of flexibility in the auction process. Coral, Dynegy, and Tenaska simply stated that the auction should be conducted according to the same terms and procedures utilized in the ERCOT auction. EGSI offered that the capacity auction rule and mechanics currently offer sufficient uniformity for efficient auctions statewide, and noted in reply comments that while not opposed to the overall philosophy of tailoring product offerings, it does not anticipate offering products other than those defined in the proposed rule. GMEC explained that uniform auctions would encourage as many bidders as possible and perhaps "ramp up" retail competition in non-ERCOT regions. OPUC and Cities argued that it did not make sense to take a step backward to non-standardized auction processes. In addition they stated that no company should be allowed to offer products inferior to or different from products other companies are offering, except to the extent some differences already exist. RRI noted that there is no legislative basis for allowing non-ERCOT and non-stranded cost companies to have different auction processes or mechanics. TXU echoed the statements of OPUC and Cities and stated that it saw no reason why non-ERCOT and non-stranded cost companies should not also have to follow the uniform processes and mechanics, with the only exception being the differences already delineated in the proposed amendments to the capacity auction rule. TXU commented in its reply comments that in order to achieve a true liquid market through the Texas capacity auctions, the capacity auction products must be tradable. Allowing some capacity auction sellers to design and sell alternative capacity auction products would interfere with tradability of capacity auction products and would stunt the growth of a liquid market. TXU also noted in reply comments that if the commission finds that there is some value in allowing divergent capacity auction processes and products, then it is only equitable to allow all of the capacity auction sellers to have different processes and products.

b. What are the potential gains to allowing differing processes or mechanics and what potential detriments exist in regards to efficiency and loss of standardization?

AEP explained that the benefits would include the ability to tailor both products and procedures to the marketplace in ways that more clearly meet market demands without causing inefficiencies from the loss of standardization between ERCOT and non-ERCOT companies. Coral, Dynegy, and Tenaska offered that, to the extent the auctions mirror the ERCOT auctions, REPs will face less of a burden to participate in these auctions. If the auctions are different, REPs will require additional resources to participate, which will reduce participation and liquidity. GMEC added that differences in auction mechanics make participation more difficult and more costly, which could be a barrier to the bidder's entry into the auction, especially in markets that are less robust. GMEC also noted that the benefits of continuity are significant to markets all over the state, including those areas that have yet to open for competition. OPUC and Cities stated that a loss of standardization will impose greater burden on bidders who would have to learn multiple sets of rules to bid into multiple auctions instead of a single set of auction rules. This unnecessary complication could lead to confusion on the day of the auction if bidding on both ERCOT and non-ERCOT products. RRI largely echoed these sentiments in stating that differing mechanics could result in market confusion that results in less participation, lost efficiency, and loss of standardization as overlapping or contradicting sets of rules and regulations may cause disputes among the players and lead to lengthy and extensive dispute resolution or litigation.

The commission finds that the arguments of AEP are not persuasive. The commission agrees with the other commenting parties that there is no reason to allow any company to offer products inferior to or different from products other companies are offering, except to the extent differences already exist. The commission finds that allowing differing mechanics could result in market confusion, resulting in potential losses in participation, efficiency, and standardization which could lead to overlapping or contradictory rules and disputes. The commission disagrees with AEP and finds that all capacity auction sellers should be subject to

the same amount of regulatory review to ensure that an affiliated PGC has auctioned 15% of its Texas jurisdictional installed generation capacity. Allowing differing auction mechanics would also create a regulatory burden in determining that an affiliated PGC has in fact met its auction requirement. The commission declines to make the recommended changes proposed by AEP.

Question Number 3: Should the Power Generating Companies (PGCs) involved in the capacity auction use a common auction platform?

None of the parties representing buyers or sellers of capacity auction products supported the use of a common platform. AEP explained that within ERCOT, only WTU (which will only offer a few products and a few entitlements) will be on a different auction platform (after CPL's divestiture of 1,354 megawatts (MW) of generation capacity in 2002). AEP added that requiring all companies to use the same platform would mean additional programming and transition costs for the companies that do not use that platform already. If an all-new platform is adopted, the old software and the associated expense of the old platform would become stranded. AEP contended that before such a cost is imposed, the commission should determine that the benefits significantly exceed the costs. EGSI argued that no buyer raised a concern or complaint regarding EGSI's auction process, which suggests that buyers were able to negotiate the process with relative ease. EGSI offered that while a common auction platform might offer some limited efficiency to buyers who participate in multiple auctions, there does not appear to be any assurance that the benefits of such efficiency would cause the market prices to rise to a sufficient level to offset the expense of developing and implementing a common auction platform. EGSI added that ERCOT sellers may have different needs than non-ERCOT sellers in order to coordinate and schedule within ERCOT. This situation should not result in non-ERCOT sellers being forced to incur additional costs for a new common platform that includes features not applicable to non-ERCOT sellers. EGSI contended that the two existing auction platforms have proven workable and based on input from interested stakeholders, there does not appear to be a strong interest in, or need for revision of, the two existing auction platforms.

Entergy REPs were concerned that requiring PGCs to use a common platform at this time may in fact prove to be disruptive and undermine any perceived benefits. Entergy REPs noted that the PGCs currently participating in the auctions as required by PURA have already developed, tested, and implemented hardware and software programs used in the September 2001 auctions. To require a common auction platform now will necessarily involve additional expenditures, development, testing, and training of purchasers prior to implementation. OPUC and Cities commented that it is not apparent that a common auction platform would improve the efficiency of the auction process. Given that fully functional platforms have been independently developed and deployed by all of the auctioning PGCs, OPUC and Cities stated that it makes little sense to impose the additional, unnecessary financial burden of requiring that everyone adopt a new platform solely for the purpose of consistency.

REI pointed out that 86% of all capacity auctioned under this rule already uses a common platform. In all, 92% of all capacity auctioned is auctioned under a common platform. REI offered that there are benefits to a common platform, but was concerned that the costs of such an approach this late in the process may outweigh those benefits. REI stated that it does not support any mandate that parties be required to purchase new, duplicative software in order to meet this goal. REI also argued that parties have already spent considerable sums developing their own systems and that requiring parties to adopt a completely new platform now, one that has not been used to date, might actually result in increased overall costs to the sellers, buyers, and ultimately the retail customers. RRI explained that although it would be convenient if all auction products used the same platform, it does not believe that the commission can force a seller to use a common platform if it chooses otherwise.

TXU stated that it had spent hundreds of thousands of dollars developing its auction platform to comply with the commission rule (money for which there is no recovery) and that to now require PGCs to expend more money in developing a common auction platform to comply with a revised rule would be patently unfair and potentially confiscatory. TXU added that there is no evidence that a common platform would have resulted in higher prices in the September 2001 capacity auctions. TXU further stated that by all accounts the prices that were achieved were in line with what most market participants would consider the market price for these products. TXU commented that there is a real possibility a common auction platform would only increase seller's expenses without a commensurate increase in auction prices, leaving sellers with decreased revenues. TXU deemed that requiring expensive and unnecessary repairs to a process that has already performed efficiently seems wasteful and unreasonable. In its own experience, TXUE offered that it bid under several auction platforms and was not at all deterred by the differences in these platforms. TXUE added that it does not believe that the use of a common auction platform would cause additional bidders to participate in the auctions or would in any way increase auction prices. As a follow-up, in reply comments, AEP pointed out that a strong consensus appears to have developed that no change is needed with regard to a common auction platform or a switching rule.

The commission concludes that a common auction platform is not needed. The combined comments of the parties indicate that the two existing auction platforms have proven workable and a change at this time may prove disruptive and reduce the benefits of the auction. Existing platforms have already been developed, tested, and implemented. Requiring a common platform would involve unnecessary additional expenditures for development, testing, and training of purchasers to implement a rule that may or may not improve the efficiency of the auction process. The commission declines to require a common auction platform, as it is not clear that the benefits of a common platform outweigh the detriments of implementing the common platform, namely, the additional costs and disruptions in the auction process.

Question Number 4: Should the Capacity Auction include a switching rule to minimize price differences across PGCs?

Only one party (who is not a buyer or seller in the capacity auctions) filed comments in support of a switching rule. Alkera, which designs and develops auction software and processes, recommended that the commission adopt a switching rule so as to limit the risk that prices would fail to achieve market-clearing levels. Alkera stated that there is significant risk that this could happen in the upcoming auctions, yet provided no support for this conclusion. In addition, Alkera stated that the problems associated with no switching rule (wrong bidders winning the wrong products resulting in buyers and sellers being worse off and average prices being lower) may not have happened in the most recent Texas auction. RRI did not take a position on this issue

but addressed some of the aspects involved if a switching rule were implemented.

The remaining parties that commented on this issue (AEP, EGSI, New Power, OPUC, Cities, REI, and TXU) generally stated that they were not opposed to the theoretical aspects of a switching rule. However, for the reasons stated below, all of these parties were united in opposing the implementation of a switching rule for the Texas capacity auctions. AEP explained that the commission must make sure that the benefits of a switching rule exceed the costs of such a rule. AEP noted that it does not believe that it is possible to accurately state how much benefit there is to such a rule. AEP added that CPL may not be auctioning after 2002, whether SWEPCO does so depends on the development of retail competition in the Southwest Power Pool (SPP) Power Region, and WTU offers only a few products in a zone where there may not be a lot of ability for bidders to switch between product offerings. Thus, AEP is very sensitive to the question of cost. AEP also commented that since the benefits of such a rule inure to the buyers, at least part of the cost of the rule should be imposed on those that obtain the benefits from the rule. AEP also explained that allocating the costs of a switching rule to buyers will give the commission better insight into the value that bidders place on a switching rule. If bidders do not support a switching rule, the commission should recognize such non-support as a signal that a switching rule needs to be carefully examined.

New Power elaborated on this idea, stating that it is their understanding that none of the parties that might benefit from a switching rule is clamoring to institute one. OPUC and Cities concluded that it must be determined whether any of the auction participants feel that auction outcomes will be significantly improved by switching and if neither buyers nor sellers feel there is a need for switching, the issue can be put to rest. REI commented that because a switching rule is potentially expensive to implement, it must have some perceived benefit before implementation is even considered. To REI's knowledge, none of the buyers or sellers in past auctions have expressed the opinion that the prices of entitlements would increase if switching were allowed.

EGSI noted that for switching to be effective, there must be multiple auctions with interchangeable products and that these two features may not exist in the non-ERCOT regions of Texas, which suggests that a switching rule may offer little, if any, benefits outside of ERCOT. EGSI suggested that buyers will not attempt to switch between ERCOT and non-ERCOT products to leverage prices among similar products because the products are not interchangeable between regions. In addition, EGSI stated that it and SWEPCO appear to be on different time lines to implement retail open access and the imposition of a switching rule before there are two sellers to switch between would be illogical. Also, if EGSI and SWEPCO join separate Regional Transmission Organizations (RTOs), then limits on the physical capability to transfer power between regions and the associated cost of transferring power may diminish the benefits of a switching rule. EGSI concluded by stating that it would be premature to incur the additional expense to develop and apply a switching rule that might offer little, or no, practical value to buyers and sellers in the non-ERCOT region of East Texas.

TXU commented that it could not be sure that the potential benefits of a switching rule would outweigh the certain costs of developing and implementing a switching rule. In addition, TXU noted due process concerns if the commission requires the implementation of a switching rule. TXU also proposed that the rule be republished so that parties are provided notice and a reasonable opportunity to be heard, if a switching rule is to be adopted. TXU explained that there were price differentials among PGCs in the September 2001 capacity auction, but those price differentials were appropriate price differentials. At the time of the auction, REI's baseload and gas-cyclic products were simply not perfect substitutes for TXU baseload and gas-cyclic products in the south 2001 congestion zone. The bidders knew that the delivery point for TXU's baseload and gas-cyclic products would be moving into the north 2002 congestion zone under ERCOT's planned zonal changes for 2002. The price differentials that were experienced for these products were at least partly a result of bidders valuing capacity in the north 2002 congestion zone more than they valued capacity in the south 2002 congestion zone. TXU then noted that a switching rule would not have changed this fact and would not necessarily have changed the price differentials. In addition, TXU noted that two of the largest buyers in the capacity auctions (TXU and REI) would be limited in their use of a switching rule due to affiliate relationships (an affiliate of a capacity auction seller may not purchase entitlements from that seller). TXU argued that Dr. David Salant (of Alkera), has said that there is no guarantee that the addition of a switching rule will increase Texas capacity auction revenue; thus requiring sellers to spend hundreds of thousands more to modify their capacity auction systems to comply with a revision that may not increase auction revenue is unreasonable.

In reply comments, AEP stressed the importance that after examining a switching rule, the only commenter that has voiced unqualified support for a switching rule has the most to gain from its implementation by offering to supply software to solve the "problem" it has identified. AEP contended that Alkera's comments are long on speculation and significantly short of explicit proof of its conclusions. AEP noted that this is highlighted by the remarkable conclusion of Alkera that "a few additional bids being facilitated by switching are worth tens of millions of dollars to the sellers". AEP then stated that if Alkera had proof of that contention, every seller would be demanding a switching rule. Unfortunately, such proof does not exist, and AEP is skeptical that any such proof could exist. OPUC and Cities offered in reply comments that if Alkera's assertions are correct, there could be enormous implications for the final determination of stranded costs and that sellers could conceivably oppose a switching rule as a means to keep auction prices low, with the intentions of recovering the potential price differential as stranded costs. TXU's reply comments added that Alkera has failed to acknowledge that the price disparities that were experienced between various sellers' products in the September 2001 capacity auction may very well be explained by several factors, including the different strike prices and congestion zones in the auction, and the anticipation of changing ERCOT congestion zones in 2002.

The commission finds the comments filed by the parties regarding a switching rule not to be persuasive. Therefore, the commission believes that the public interest requires a switching rule to minimize price distortions. The commission believes that the price disparities in the September 2001 and March 2002 Capacity Auctions cannot be explained solely by the differing strike prices and different congestion zones, but are based, in part, on the lack of appropriate switching provisions in the current auction design. The commission finds that the inability of bidders to switch during the auction from one affiliated PGC's products to a similar or identical product of another affiliated PGC whose price is lower, reduces the expected revenues from the

auctions, and did so in the recently concluded March 2002 auction. The commission believes that the affiliated PGCs within ERCOT should implement switching procedures to reduce the risk of such price disparities in future Capacity Auctions. The affiliated PGCs within ERCOT shall provide the commission with proposed switching procedures, including detailed activity rules, for implementation in the September 2002 auction.

Several parties also provided redlined versions of the proposed rule suggesting rule language that should be used to incorporate their recommendations and comments. To the extent that language is duplicative of the comments received, such language is not repeated here. To the extent that reply comments did not significantly add to or change a party's original arguments, those reply comments are not summarized here.

Alkera's comments focused solely on a switching rule and included a description of a switching rule, the elements it would include, and how a switching rule would work. Those comments are outside the scope of the preamble questions and thus are not summarized in detail here. In addition, SPS did not specifically comment on the preamble questions, but pointed out that under PURA Chapter 30, Subchapter I, competition in SPS's service territory will be delayed until at least January 1, 2007.

REI filed reply comments concerning how to alleviate potential congestion cost problems. These comments were filed late and address new issues outside the scope of the published proposed rule and are therefore not addressed or summarized in this preamble.

Comments on specific sections of the rule:

Subsection (c)(6) Definitions:

AEP recommended that the use of "local Austin, Texas time" may be confusing to bidders outside of the state of Texas and that the use of "central prevailing time" would be more effective.

The commission agrees that referencing Austin, Texas may be confusing. This language has been changed to refer to "central prevailing time."

Subsection (d) General requirements:

AEP recommended that specific language be adopted to allow non-ERCOT and non-stranded cost companies the flexibility to alter their auction products and mechanics as discussed in Preamble Question 2.

As discussed above in connection with Preamble Question 2, AEP's recommended language is not adopted.

Subsection (e)(1) Available entitlements and amounts:

AEP recommended deleting the detailed descriptions of the products contained in subsections (f) and (g).

The commission declines to adopt the recommendation of AEP. The detailed product descriptions which AEP feels are unnecessary are included in the rule language to specify the product descriptions, instead of allowing the possibility for the offered products to change from auction to auction and seller to seller. This standardization will facilitate efficiency in the capacity auctions and liquidity in the secondary market as auction entitlements will be more easily traded.

Subsection (e)(2)(B) Forced outages:

AEP stated that the use of the word "firmness" is not entirely accurate in the context of the rule and that "availability" would more accurately express the commission's intent. RRI commented that proposed subsection (e)(2)(B) should apply only to those sellers operating two or fewer generating units in total. Sellers operating fleets of generation in multiple congestion zones should not be allowed to bypass the current rule's reliability standard because they have one or two generating units in a particular zone and the remainder of the fleet in another. REI proposed clarification that only one of the units associated with an entitlement product must be down in order to trigger the forced outage reduction.

In reply comments, AEP commented that REI's comments accurately capture the intent of the parties and if adopted, AEP's proposal would not be necessary. AEP clarified its support for REI's proposal and its opposition of RRI's proposal by stating, for example, that WTU's baseload entitlement is supported by a single plant. If that plant were to experience a forced outage, it is true that other WTU resources would continue to produce electrons, but this replacement energy would be a product at a significantly higher cost than the fuel cost mandated for the baseload product under this rule. Also, this would give the entitlement holder an availability factor greater than the underlying units, at a lower cost than that incurred by the owners of the plant. EGSI agreed with the proposed change of REI and stated that RRI's proposal is inconsistent with PURA. OPUC and Cities supported the proposal of RRI and were concerned that the forced outage rate could easily be gamed to the detriment of the entitlement holder.

The commission agrees with REI's proposed language to clarify the intent of the provision on forced outage reduction and has modified the rule accordingly. The commission does not agree with the arguments of OPUC and Cities in support of RRI's proposed interpretation. The commission finds the reply comments of AEP persuasive in illustrating that RRI's interpretation would give the entitlement holder an availability factor greater than the underlying units, at a lower cost than the actual owners of the plant. This was not the intent of the rule and the commission declines to adopt RRI's interpretation of the forced outage reduction provision.

Subsection (e)(2)(C) Forced outage notification:

AEP recommended that, for clarification purposes, the hour-ahead schedule is the appropriate time frame for determining the existence of emergency conditions and would allow the buyer the opportunity to adjust its scheduling.

The commission agrees and has modified the appropriate language in the rule.

Subsection (e)(3) Planned outage:

AEP recommended that the rule be modified to include Planned Outage Hours and Maintenance Outage Hours to determine the reductions that should be applied to the number of entitlements offered by the affiliated PGCs. Accordingly, AEP suggested that proposed subsection (e)(3) be deleted and offered substitute language. RRI recommended language that shifts entitlement adjustments for planned outages to non-shoulder months and ensures that the 15% requirement for the capacity auction is met. REI recommended clarifying language to the rule.

In reply comments, AEP stated that it believes its language proposal is best, but believes that REI's proposal is easier to understand than the proposed rule. AEP stated that it did not understand the language proposed by RRI. EGSI opposed the language of RRI and stated that the capacity auction is intended to provide bidders with a "slice" of the seller's owned generation. That owned capacity will be subject to planned maintenance to

ensure the continued reliable and efficient operation of generating units. The proposed rule provides a reasonable schedule for planned maintenance and should not be revised to insulate entitlement holders from the necessity for planned maintenance. TXU echoed the opinions of EGSI, arguing that RRI's proposed change is a thinly veiled attempt to require capacity auction sellers to sell more than 15% of their capacity, in violation of PURA §39.153.

The commission finds the reply comments of AEP, EGSI, and TXU persuasive and declines to adopt the proposed language of RRI. For clarifying purposes, the proposed language of REI is adopted in lieu of AEP's proposed language.

Subsection (e)(4) Generation units offered:

AEP recommended that the language that specifies planned outage history for the years of 1998, 1999, and 2000 be modified to the most recent three operating years, as the specific years in the rule were used for the initial capacity auction when those were the most recent three operating years.

In reply comments, TXU argued that there was no reason to make AEP's proposed change. TXU noted that the planned outages for a given unit are unlikely to change significantly between the year 2000 and the end of the Texas capacity auctions. The sellers have already gathered their planned outage histories for 1998, 1999, and 2000. It does not seem cost-effective to require sellers to go through the significant expense of creating new planned outage histories when a unit's planned outages are unlikely to have changed to any great extent.

The commission agrees with the reply comments of TXU and finds that it is not cost-effective to require the calculation of new planned outage histories. It is unlikely that a unit's planned outages will change significantly. The commission declines to adopt AEP's recommended language.

Subsection (e)(5) Obligations of affiliated PGC:

AEP recommended language that would need to be included if the details of the capacity auction products were deleted from the rule and only included in the Capacity Auction EEI/NEMA Master Power Purchase & Sale Agreement.

The commission finds the recommended language of AEP inappropriate, consistent with the commission decision to retain the detailed product descriptions in the rule.

Subsection (e)(7)(A) Credit requirements:

RRI proposed that this subsection include the ratings from Fitch Investor Services and that calls for additional security should be based on a blend of the three services in lieu of the lower of the three. RRI also recommended that subsection (e)(7)(A)(ii) be amended to require posting of capacity and energy payment security no more than 90 days in advance of the month when the entitlement may be dispatched.

In reply comments, TXU argued against RRI's proposal of not posting credit until 90 days before the entitlement month. TXU argued that the capacity auction seller would have no guarantee until 90 days before dispatch that the buyer could actually pay for the entitlement.

The commission finds that the recommendation of RRI to include the ratings from Fitch Investor Services is unnecessary. The current language on credit requirements is sufficient and not significantly changed by the addition of another rating service. The commission also declines to make the recommended change proposed by RRI regarding the posting of credit. The commission finds it is inappropriate to allow potential bidders in the capacity auction the equivalent of unlimited buying credit, without any assurance of the ability to pay for awarded entitlements until after the auction and 90 days before dispatch. During this period, a buyer's financial condition could change, imperiling its ability to pay for the power. If this were to happen, the seller would be at risk for the purchase price agreed to in the auction.

Subsection (e)(7)(B)(i) Unsecured credit:

AEP recommended that the language and table be deleted and that the commission use the working group to set credit limits on an auction-by-auction basis. AEP provided substitute language to facilitate this recommendation.

The commission declines to make the change recommended by AEP. The commission believes that standardizing the credit requirements will facilitate the effectiveness of the auctions, rather than resorting to a working group to meet before each auction to negotiate new credit limits.

Subsection (e)(7)(H) Credit requirements (New language):

AEP proposed specific language to accompany its recommendation concerning Preamble Question Number 1.

Consistent with its decision in Preamble Question Number 1, the commission adopts a modified version of the language proposed by AEP regarding credit requirements.

Subsections (f) and (g) Product descriptions for capacity auctions in ERCOT and non-ERCOT areas:

AEP recommended that this section be deleted. REI proposed modifications to several portions of subsection (f) that clarify that ERCOT is the entity that dispatches ancillary services, as well as other clarifying language.

TXU disagreed with AEP in reply comments and stated that when issues have already been negotiated and agreed on for three different capacity auctions, it seems wasteful and inefficient to throw those same issues up for debate for each capacity auction. By building the product descriptions into the capacity auction rule, both capacity auction buyers and sellers will receive a measure of certainty that the dispatch systems that have already been designed will not have been designed in vain, and that the liquid wholesale market that has begun in Texas will continue. AEP recommended a slight modification to the language provided by REI, should AEP's recommendation for deletion not be adopted.

Consistent with its decision on subsection (e)(1), the commission declines to delete the detailed product descriptions in subsections (f) and (g). The commission finds the reply comments of TXU persuasive in justifying the detailed product language contained in subsections (f) and (g), and to a lesser extent in subsection (e)(1). The commission agrees that ERCOT is the entity that dispatches ancillary services and also adopts other clarifying language recommended by REI to eliminate potential confusion in subsection (f).

Subsection (f)(2)(A) Responsibility transfers:

GMEC recommended that given the preparations that the entitlement holder must make under subsection (f)(2)(B)(i), responsibility transfers (RTs) by the affiliated PGC should be completed a minimum of ten days before the commencement of the entitlement. TXU recommended a clarifying change to recognize that respective QSEs of a capacity auction seller and buyer may not

have a RT agreement in place before the purchase of capacity auction products.

TXU argued against the proposal of GMEC in reply comments and stated that before a responsibility transfer can be established, essentially four parties must come together to an agreement: the buyer, the buyer's QSE, the seller, and the seller's QSE. TXU argued that it would be inappropriate and inequitable to impose the risks of an agreement not being reached on only one party to those negotiations. TXU further explained that a capacity auction seller does not have sole control of when a responsibility transfer is put into place. Under GMEC's proposal, a capacity auction buyer would have an incentive to drag its feet in reaching an agreement so that the capacity auction seller could be held liable for the financial implications if the seller failed to meet its contractual obligations.

The commission declines to adopt GMEC's changes to the proposed language. The commission finds TXU's reply arguments that it would be inappropriate to add this risk to the capacity auction seller persuasive, as it does not have sole control of when a responsibility transfer is put into place. For clarification purposes, the commission adopts the proposed language of TXU.

Subsection (f)(2)(B)(i) Notice of grouped entitlements:

TXU recommended a clarifying change to recognize that dispatch systems of some affiliated PGCs do not require the use of a written list of entitlements.

The commission adopts TXU's proposed language for clarification purposes and has made the corresponding change to the rule language.

Subsection (f)(3) - (6) Timing of scheduling for baseload, gas-intermediate, gas-cyclic, and gas-peaking:

TXU recommended language to account for possible changes in the ERCOT protocols regarding the timing of scheduling.

The commission finds it prudent to adopt TXU's recommended language to account for possible changes in ERCOT protocols concerning the timing of scheduling.

Subsection (f)(4)(A)(v) Default schedule for gas-intermediate product:

TXU recommended additional clarifying language to this subsection to account for the limitation on the number of starts for a gas-intermediate product imposed by proposed subsection (f)(4)(A)(iv)(IV).

The commission agrees with TXU that clarifying language is justified and has made corresponding changes to the rule language.

Subsection (f)(5)(A)(ii)(I) and (V) Timing of gas-cyclic scheduling:

AEP recommended that this section be deleted, but if the commission decides to keep it in the rule, AEP provided clarifying language to avoid confusion over the term "daily capacity commitment."

In reply comments, TXU stated that if the commission implements AEP's proposed language a May 2003 gas-cyclic product that was sold as a two-year strip in the September 2001 auction would be slightly different from a May 2003 gas-cyclic product sold as a one year strip in the September 2002 auction. Such differences would not only make gas-cyclic products difficult to trade, but would make it impossible to group them for dispatch.

Due to concerns over the liquidity of the wholesale market, and thus the ability to trade capacity auction products, the commission finds TXU's reply comments persuasive and declines to make AEP's recommended change.

Subsection (h) Auction process:

AEP recommended an introductory statement to clarify that non-ERCOT and non-stranded cost companies do not have to follow the auction processes described herein, if AEP's position is adopted by the commission.

Consistent with the commission's decision in Preamble Question Number 2, the commission declines to adopt AEP's recommended language.

Subsection (h)(1)(B)(iv) Auction conclusion:

TXU proposed clarifying language regarding the 15% requirement for auction conclusion. In reply comments, AEP opposed the language suggested by TXU and stated that TXU's language made the rule less clear.

The commission finds that TXU's proposed language clarifies the intent of the rule and thus adopts the recommendation.

Subsection (h)(2)(A) Auction administration:

AEP noted that if a common platform is adopted by the commission, this subsection would need to be amended accordingly.

Consistent with the commission's decision in Preamble Question Number 3, no language modification is required for subsection (h)(2)(A).

Subsection (h)(2)(B)(i) Method of notice:

AEP recommended that a better approach than administrative review would be a method where the PGC files notice and, if no protests are filed, the notice is deemed approved. AEP supplied language to this effect.

The commission agrees with AEP and finds that the proposed methodology is less administratively burdensome and thus adopts AEP's recommended language.

Subsection (h)(2)(B)(ii) Contents of notice:

TXU recommended clarifying language to illustrate that it is no longer necessary for an affiliated PGC to include a bid increment formula in its capacity auction notice because proposed subsection (h)(2)(B)(ii)(I) specifies standard bid increment ranges for all capacity auction sellers.

The commission agrees with TXU that the standard bid increment ranges replace the bid increment formula and thus the notice no longer needs to include a bid increment formula. The commission adopts TXU's clarifying language. The commission also clarifies subsection (h)(2)(B)(ii)(II) that for an entitlement subject to the forced outage provision in subsection (e)(2)(B), the most recent three-year rolling average of the forced outage rate will be included in the notice of capacity available for auction, when the designation of which power generation units will be used to meet the entitlement to be auctioned is made.

Subsection (h)(2)(B)(iii)-(v) Timing of capacity auction document submittal for notice:

TXU recommended changes necessary to ensure that capacity auction sellers will have sufficient time to review the creditworthiness of perspective bidders. In addition, these changes will ensure that approved bidders have sufficient time to review the

amount of credit that has been granted and to return in executed form the applicable capacity auction-specific master agreement.

The commission finds TXU's recommended language prudent in that it will allow all parties sufficient time to review credit issues. The commission adopts TXU's recommended language.

Subsection (h)(2)(B)(v) Credit adjustment:

AEP recommended that the language that disallows additional credit after an auction begins be deleted and that new language allowing the practice be adopted.

The commission declines to adopt AEP's recommendation. While the commission recognizes that there may be benefits associated with allowing bidders to request and receive additional credit after an auction begins, the commission sees numerous problems associated with implementing such a subjective provision in a fair and non-discriminating fashion. No change has been made to the language of the proposed rule.

Subsection (h)(3)(B)(vi) Subsequent auctions:

TXU proposed a clarification concerning the start date of the September 2003 capacity auction, which was supported by EGSI in reply comments.

The commission agrees with TXU and EGSI that the start date in the rule needs to be clarified and modifies the rule accordingly.

Subsection (h)(7) Establishment of opening bid price:

RRI suggested that subsection (h)(7)(A) be amended to require sellers to issue opening bids prior to each auction subject to the challenge provisions in the proposed rule, as opening bids may be arbitrarily high, based upon outdated calculations. RRI explained that contingent on its recommendation for subsection (h)(7)(A), (h)(7)(B) would no longer be needed and recommended its deletion. REI proposed language to subsection (h)(7)(B) to clarify that the comparison of the weighted average opening bid must be completed for all entitlements of a given product across all congestion zones, and recommended that for clarification purposes, the terms "owner" and "purchaser" be replaced with "holder" throughout the rule. RRI commented that subsection (h)(7)(C) should be amended such that a seller would be deemed to have met the 15% requirement if the unsold entitlements are made available to the market through other auction mechanisms. TXU recommended clarifying language to subsection (h)(7)(C) regarding the meeting of the 15% requirement.

In reply comments, TXU was against the proposal of RRI regarding opening bids and stated that RRI seems to misunderstand the genesis of the opening bid prices in Texas. TXU stated that the capacity auction opening bid prices are cost-based and not market-based. TXU commented that contrary to RRI's assertion, market forces do not and will not change the seller's variable cost for operating its capacity. As a result, even though the market for capacity may change from auction to auction, there is no need to require auction sellers to change the opening bid prices from auction to auction. TXU also opposed RRI's proposal concerning the 15% requirement. TXU offered that the Texas capacity auctions are monitored and sanctioned by the commission to protect both capacity auction buyers and Texas consumers. A separately conducted capacity auction would not have such protections. Moreover, allowing a separately conducted capacity auction to satisfy the 15% requirement would essentially defeat the purpose of the Texas capacity auctions. EGSI also commented against RRI's proposal concerning opening bids and stated that the most volatile variable cost associated with plant operations is the cost of fuel for gas-fired generation, which is not included in the bid price. EGSI also disagreed with RRI's proposal regarding the 15% requirement. EGSI stated that the proposed rule provides sufficient commission oversight through the requirement that an affiliated PGC make a proposal to the commission through the auction notice to satisfy the 15% requirement if there is an auction where no month awards all of the entitlement of a particular product. EGSI supported REI's proposed language change regarding the use of the word "holder."

The commission declines to make RRI's recommended changes. The commission finds the reply comments of TXU and EGSI persuasive on these issues. The commission does, however, adopt the recommended clarifying language changes proposed by REI and TXU. The commission finds the proposed language consistent with the intent of the rule.

Subsection (j)(2) True-up process:

EGSI noted that the proposed rule does not incorporate the settlement of stranded cost issues in EGSI's Unbundled Cost of Service (UCOS) case and could be misinterpreted as requiring EGSI to participate in a true-up process that the commission has found to be inapplicable to EGSI. EGSI proposed language to clarify that it is not subject to the capacity auction true-up.

The commission agrees with EGSI and for clarifying purposes adopts modified language which is more general in nature, but consistent with the concerns of EGSI.

Subsection (m) Contract terms:

AEP recommended the restoration of a sentence addressing a standard agreement, contingent on its recommendation that the detailed contract language is deleted from the rule. In addition, AEP noted that Paragraph F of Schedule CA, concerning alternative dispute resolution, should be included in subsection (m) and supplied such language. TXU recommended that this section be revised to remove the references to bilateral credit requirements. GMEC's proposed language stated that failure to supply the purchased generation will result in the assessed charges being the PGC's responsibility and not the entitlement holder's.

In reply comments, TXU again opposed the bilateral credit provision and added that the capacity auction products are essentially 98% firm products backed by multiple generation units. The odds of a capacity auction seller being physically unable to meet its capacity auction obligations are extremely low. Even a catastrophic credit event for a capacity auction seller would have no effect on the seller's ability to deliver the output from its assets. This fact alone illustrates why bilateral credit terms are not necessary. TXU also offered that bilateral credit terms would be extremely difficult to implement and would be potentially financially destructive to capacity auction sellers. It would be difficult to quantify the amount of collateral that a seller would need to post in order to assure its obligations. TXU did not oppose the language recommended by GMEC as TXU felt it confirmed the buyer's rights. However TXU felt that this issue would be more appropriately dealt with in the contract and not in the Substantive Rules. Therefore, TXU offered clarifying language. Coral, Dynegy, and Tenaska supported GMEC's proposed language and stated that they believe that the language will protect buyers from ERCOT fees assessed due to short-term delivery failures by capacity auction sellers. However, they also asserted that the bilateral credit protections are necessary to protect buyers from long-term risks associated with a seller's default.

Consistent with its decision not to delete the detailed product language in subsections (f) and (g), the commission declines to adopt AEP's recommendation to restore a sentence addressing a standard agreement. The commission agrees with AEP that language concerning alternative dispute resolution should be included in subsection (m) and adopts AEP's proposed language. The commission finds TXU's reply comments persuasive and has removed the references to bilateral credit requirements. While the commission is sympathetic to the plight of buyers regarding the risk of a seller's default, the commission declines to impose the additional cost associated with meeting bilateral credit requirements on the capacity auction sellers. The commission agrees with TXU that the probability of a seller being unable to meet its contractual obligation is extremely low and therefore imposing the additional cost of a surety or performance bond, or some other form of guarantee, would not be justified. The commission finds that capacity auction products are generally 98% firm and backed by multiple generation units. The commission agrees with TXU's statement that even a catastrophic credit event is unlikely to have a long-run effect on the seller's ability to deliver the output from its assets. The commission finds that the long-run risk of these assets being unable to deliver power is not great enough to justify the cost to sellers and the potential problems associated with implementation of bilateral credit. The commission does recognize that there is a slightly greater risk associated with entitlements that are supported by a smaller number of generating units. The commission still finds this amount of risk not great enough to require bilateral credit requirements. The commission encourages participation in the Texas capacity auctions, and in an effort to eliminate as much risk as possible, the commission adopts GMEC's proposal that failure to supply the purchased generation will result in the seller's liability for any charges assessed against the entitlement holder. The commission adopts this recommendation with TXU's proposed change that clarifies that this is a contractual issue. Language reflecting these decisions has been incorporated into the rule.

Subsection (m)(4) Scheduling discrepancies:

AEP recommended that this provision be deleted from the rule as it is handled by Schedule CA. TXU recommended clarifying language that details the relationship between the general requirements of subsection (m)(4) and the more specific requirements of proposed subsection (f)(3)(A)(iv)(V) and (f)(4)(A)(v).

The commission does not agree with AEP that the language in subsection (m)(4) needs to be deleted. No persuasive argument was made that the current language needs to be deleted. For clarification purposes, the commission adopts TXU's proposed language.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The commission also proposes this rule pursuant to PURA §39.153, which grants the commission authority to establish rules that define the scope of the capacity entitlements to be auctioned, and the procedures for the auctions.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 31.002, 39.153, 39.201, and 39.262.

§25.381. Capacity Auctions.

(a) Applicability. This section applies to all affiliated power generation companies (PGCs) as defined in this section in Texas. This section does not apply to electric utilities subject to the Public Utility Regulatory Act (PURA) §39.102(c) until the end of the utility's rate freeze. It is recognized that certain commission orders issued during 2001 have effectively delayed competition in the service territories of Southwestern Electric Power Company (SWEPCO) and Entergy Gulf States, Inc. (EGSI). This section shall apply to auctions conducted after 2001 by SWEPCO and/or EGSI only when competition is implemented in their respective service territories.

(b) Purpose. The purpose of this section is to promote competitiveness in the wholesale market through increased availability of generation and increased liquidity by requiring electric utilities and their affiliated PGCs to sell at auction entitlements to at least 15% of the affiliated PGC's Texas jurisdictional installed generation capacity, describing the form of products required to be auctioned, prescribing the auction process, and prescribing a true-up procedure, in accordance with PURA §39.262(d)(2).

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

(1) Affiliated power generation company (PGC)--Any affiliated power generation company that is unbundled from the electric utility in accordance with PURA §39.051.

(2) Assigned units--The PGC-specific generating units that form the block of capacity from which an entitlement is sold.

(3) Auction start date--The date on which an auction begins.

(4) Business day--Any day on which the affiliated PGC's corporate offices are open for business and that is not a banking holiday.

(5) Capacity auction product--One of the following: "baseload", "gas-intermediate", "gas-cyclic", or "gas-peaking". Each capacity auction product is further described in subsections (f) and (g) of this section.

(6) Close of business--5:00 p.m., central prevailing time.

(7) Congestion zone--An area of the transmission network that is bounded by commercially significant transmission constraints or otherwise identified as a zone that is subject to transmission constraints, as defined by an independent organization.

(8) Credit rating--A credit rating on an entity's senior unsecured debt, the entity's corporate credit rating, or the entity's issuer rating.

(9) Daily gas price--The index posting for the date of flow in the Financial Times energy publication "Gas Daily" under the heading "Daily Price Survey" for East-Houston-Katy, Houston Ship Channel. For EGSI gas entitlements in the eastern congestion zone, the daily gas price will utilize the "Gas Daily" index posting for Henry Hub. For EGSI gas entitlements in the western congestion zone, the daily gas price will be an average of the "Gas Daily" index posting for East-Houston-Katy, Houston Ship Channel.

(10) Day-ahead--The day preceding the operating day.

(11) Entitlement or capacity entitlement--The right to purchase and receive, under the applicable capacity auction master agreement, a block of 25 megawatts (MW) of electrical capacity and energy

from the assigned units for a specific capacity auction product for one calendar month.

(12) Forced outage--An unplanned component failure or other condition that requires the unit be removed from service before the end of the next weekend.

(13) Holder--A person or entity that has acquired ownership of an entitlement under the terms of the applicable capacity auction Master Agreement.

(14) Installed generation capacity--All potentially marketable electric generation capacity owned by an affiliated PGC, including the capacity of:

(A) Generating facilities that are connected with a transmission or distribution system;

(B) Generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and

(C) Generating facilities that will be connected with a transmission or distribution system and operating within 12 months.

(15) Master Agreement or Agreement--The applicable Capacity Auction EEI/NEMA Master Power Purchase & Sale Agreement.

(16) Starts--Direction by the holder of an entitlement to dispatch a previously idle entitlement.

(17) Texas jurisdictional installed generation capacity--The amount of an affiliated PGC's installed generation capacity properly allocable to the Texas jurisdiction. Such allocation shall be calculated pursuant to an existing commission-approved allocation study, or other such commission-approved methodology, and may be adjusted as approved by the commission to reflect the effects of divestiture or the installation of new generation facilities.

(d) General requirements. Subject to the qualifications for auction entitlements and the auction process described in subsections (e) and (h) of this section, each affiliated PGC subject to this section shall sell at auction capacity entitlements equal to at least 15% of the affiliated PGC's Texas jurisdictional installed generation capacity. Divestiture of a portion of an affiliated PGC's Texas jurisdictional installed generation capacity will be counted toward satisfaction of the affiliated PGC's capacity auction requirement only if the divestiture is made pursuant to a commission order in a business combination proceeding pursuant to PURA §14.101, and after the transfer of the assets and operations to a third party.

(e) Product types and characteristics.

(1) Available entitlements and amounts. The following products, defined separately in subsection (f) of this section for Electric Reliability Council of Texas, Inc. (ERCOT) and in subsection (g) of this section for non-ERCOT areas, shall be auctioned as capacity entitlements under subsection (d) of this section. Upon showing of good cause by the affiliated PGC and approval by the commission, an affiliated PGC may propose to auction entitlements different from those described in this section, including unit-specific capacity. Each affiliated PGC shall auction an amount of each applicable product in proportion to the amount of Texas jurisdictional installed generating capacity on the affiliated PGC's system that are the respective type of generating units. An affiliated PGC that owns generation in multiple congestion zones shall auction entitlements for delivery in each congestion zone. The amount of each product auctioned in each zone shall be in proportion to the amount of the respective type of generating units located in that zone, but the total shall not be less than 15% of the affiliated PGC's Texas jurisdictional installed generation capacity. The available entitlements for the months of March, April, May, October, and November of each year may be reduced in proportion to the average annual planned outage rate for the group of generating units associated with each type of entitlement. Entitlements shall be for system capacity.

(2) Forced outages. For any given congestion zone:

(A) For all entitlements except those described in subparagraph (B) of this paragraph, if all units providing capacity to an entitlement product experience a forced outage or an emergency condition prevents or restricts the ability of an affiliated PGC to dispatch a particular entitlement product, the entitlements of that product may be reduced in proportion to the percentage reduction in capacity of the units assigned to that entitlement; provided that such reductions in availability of any single entitlement do not exceed 2.0% of the total monthly energy available from the entitlement.

(B) For entitlements that are supported by two or fewer generating units, if one or more of the units providing capacity to an entitlement product experiences a forced outage or an emergency condition that prevents or restricts the ability of an affiliated PGC to dispatch a particular entitlement product, the entitlements of that product may be reduced in proportion to the percentage reduction in capacity of the units assigned to that entitlement; provided that such reductions in availability of any single entitlement do not exceed the most recent three-year rolling average of the forced outage rate for the unit(s) supporting the entitlement. The three-year rolling average of the forced outage rate applicable to entitlements under this subparagraph shall be included in the notice of capacity available for auction, under subsection (h)(2)(B)(ii)(II) of this section.

(C) Notification of any such reductions will take place as soon as possible, but in any event, at least one hour prior to the hour-ahead scheduling period applicable to when the reduction is to take place.

(3) Planned outage. The total MW reduction for planned outages is determined by calculating the average MW of monthly planned outage for the generating plants associated with a product over the previous three calendar years, multiplied by 12. The resulting planned outage hours are then rounded down to the nearest whole entitlement (25 MW block). These "outage entitlements" can then be removed from any of the five specified outage months (March, April, May, October, and November) in any combination.

(4) Generation units offered. If an affiliated PGC changes the assignment of a power generation unit to one of the four available product entitlements (baseload, gas-intermediate, gas-cyclic, or gas-peaking), then the affiliated PGC shall file with the commission the proposed changes in its assignment of each of its power generation units to one of the four available product entitlements and the resulting amount of each type of entitlement to be auctioned. As part of this filing, the affiliated PGC shall provide planned outage histories for the years 1998, 1999, and 2000 for each generating unit to be used to calculate the average annual planned outage rate for each group of generating units. Interested parties shall have 30 days in which to provide comments on the affiliated PGC's proposed changed assignments. If no comments are received, the affiliated PGC's proposed assignment shall be deemed appropriate. If any party objects to the affiliated PGC's proposed assignments, then the commission shall determine the appropriate assignment considering the manner in which the affiliated PGC expects to use such generation units.

(5) Obligations of affiliated PGC. The affiliated PGC shall dispatch entitlements only as directed by the holder of the entitlement in accordance with the applicable product description. The affiliated PGC may not refuse to dispatch the entitlement and may not curtail

the dispatch of an entitlement unless expressly authorized by this section or by the applicable Master Agreement, or unless directed to do so by the independent organization in order to alleviate a system emergency. The affiliated PGC shall specify in its notice provided pursuant to subsection (h)(2)(B) of this section the point on the transmission system where energy from each entitlement is delivered to the entitlement holder.

(6) Entitlement holder receives no possessory interest or obligations.

(A) No possessory interest. The entitlements sold at auction shall include no possessory interest in the unit or units from which the power is produced.

(B) No possessory obligations. The entitlements sold at auction shall include no obligation of a possessory owner of an interest in the unit or units from which the power is produced.

(C) Scheduling. The entitlement holder shall have the right to designate the dispatch of the entitlement, subject to other provisions of this subsection and the scheduling limitations provided for in the applicable Agreement.

(7) Credit requirements.

(A) Standards. Entities submitting bids and all entitlement holders shall satisfy one of the following credit standards:

(i) The entity holds an investment grade credit rating (BBB- or Baa3 from Standard and Poor's or Moody's respectively or an equivalent);

(ii) The entity provides an escrowed deposit equal to the capacity price for the shorter of the duration of the entitlement or three months plus the amount that would be paid to exercise the entitlement for the shorter of the duration of the entitlement or three months at the assumed dispatch provided in either subsection (h)(6)(A)(iii) or subsection (h)(6)(C)(vi) of this section;

(iii) The entity provides a letter of credit or surety bond equal to the capacity price for the shorter of the duration of the entitlement or three months plus the amount that would be paid to exercise the entitlement for the shorter of the duration of the entitlement or three-months at the assumed dispatch provided in either subsection (h)(6)(A)(iii) or subsection (h)(6)(C)(vi) of this section, irrevocable for the duration of the entitlement;

(iv) The entity provides a guaranty from another entity with an investment grade credit rating; or

(v) The entity makes other suitable arrangements with the affiliated PGC, provided that the affiliated PGC makes such arrangements available on a non-discriminatory basis.

(B) Unsecured credit. To be eligible for unsecured credit, entities submitting bids shall satisfy the criteria in either clause (i), (ii), or (iii) of this subparagraph, with the amount of unsecured credit to be provided to such entities to be determined as follows:

(i) For bidders with an investment grade credit rating. The amount of credit available to a bidder relying on an investment grade credit rating of itself or its guarantor will be determined according to procedures set out below. If the bidding entity or its guarantor has an investment grade credit rating and minimum equity of $100 million, the amount of credit available will be determined using the lesser of $125 million, or the applicable percentage of the bidder's stockholder equity set out in the following table, except that the amount of credit will be reduced to the extent appropriate to take into account any outstanding commitments that a bidder has for existing capacity auction entitlements.

Figure: 16 TAC §25.381(e)(7)(B)(i)

(ii) If the bidder is a municipality or cooperative not publicly rated. If the bidder is a municipality or electric cooperative that is not publicly rated but has a minimum equity (patronage capital) of $25 million, a minimum times-interest-earned ratio (TIER) of 1.05, a minimum debt service coverage (DSC) ratio of 1.00, and a minimum equity-to-assets ratio of 0.15, then the amount of credit will be the lesser of $125 million or 5.0% of the bidder's unencumbered assets, except that the amount of credit will be reduced to the extent appropriate to take into account any outstanding commitments that a bidder has for existing capacity auction entitlements.

(iii) If the bidder is a privately-held entity not publicly rated. If the bidder is a privately-held entity that is not publicly rated, but has a minimum equity of $100 million, a minimum tangible net worth of $100 million, a minimum current ratio of 1.0, a maximum debt-to-capital ratio of 0.60, and a minimum ratio of earnings before interest, taxes, depreciation, and amortization (EBITDA) to interest and current maturities of long term debt (CMLTD) of 2.0, then the amount of credit will be the lesser of $125 million or 1.80% of the bidder's stockholder equity, except that the amount of credit will be reduced to the extent appropriate to take into account any outstanding commitments that a bidder has for existing capacity auction entitlements.

(C) All cash and other instruments used as credit security shall be unencumbered by pledges for collateral.

(D) If a bidder or entitlement holder chooses to use a surety bond to satisfy its credit requirements, then the form of such surety bond will be negotiated in good faith between the bidder or entitlement holder and the affiliated PGC and reasonably acceptable by an issuer of surety bonds.

(E) In the event the holder of the entitlement initially relied on its investment grade credit rating but subsequently loses it during the entitlement period, the holder of the entitlement shall provide alternative financial evidence within three business days.

(F) The holder of the entitlement shall notify the affiliated PGC of any material changes that impact its compliance with the financial requirements it relied on in meeting the credit standards in this section.

(G) In the event the holder or seller of the entitlement fails to meet or continue to meet its security requirement, or an Event of Default results in the termination of the Agreement, the entitlement shall revert to the affiliated PGC and shall be auctioned in the next auction for which notice can be provided of the sale of the entitlement pursuant to subsection (h)(2)(B) of this section.

(H) If an entitlement holder's creditworthiness or financial security materially and adversely changes after the auction is completed, as a result of an event specified in the Agreement, the affiliated PGC shall provide the entitlement holder with written notice requesting additional credit support or performance assurance in a commercially reasonable manner, as set forth in the Agreement. The seller's credit requirements shall clearly identify objective criteria that would trigger a request for additional security and the methods and time frame in which an entitlement holder must satisfy such a request. The affiliated PGC may suspend delivery of any capacity or energy for which the affiliated PGC has not already received payment until the performance assurance is received, in accordance with the Agreement.

(I) If at any time after the auction is completed, there shall occur a downgrade event with respect to the credit standing of the seller, then the entitlement holder may require the seller to provide a credit assurance in an amount determined by the entitlement holder in

a commercially reasonable manner. In the event the seller fails to provide a commercially reasonable performance assurance or guarantee within three business days of the receipt of notice, then an event of default shall be deemed to have occurred, and the entitlement holder will be entitled to suspend performance under the Agreement and withhold payments for energy not yet delivered, and may ultimately terminate the Agreement after the suspension period as prescribed in the Agreement.

(f) Product descriptions for capacity auctions in ERCOT. The provisions in this subsection apply to capacity auctions in ERCOT. Subsection (g) of this section contains provisions applicable to capacity auctions in non-ERCOT areas.

(1) Definitions.

(A) The following words and terms, when used in this subsection shall have the following meanings, unless the context indicates otherwise.

(i) Balancing energy service down deployed--The number of megawatt-hours (MWh) of balancing energy service down deployed by ERCOT from an entitlement.

(ii) Balancing energy service up deployed--The number of MWh of balancing energy service up deployed by ERCOT from an entitlement.

(iii) Daily capacity commitment--The amount of capacity scheduled by an entitlement holder that an affiliated PGC must make available from an entitlement for the provision of energy or permitted ancillary services for an operating day from an entitlement.

(iv) Day-ahead schedule--A schedule submitted by an entitlement holder to an affiliated PGC of the entitlement holder's scheduled usage of the entitlement for the following operating day.

(v) Default qualifying scheduling entity (QSE)--The QSE that is designated by the entitlement holder to ERCOT as its default QSE.

(vi) Energy scheduled--The final schedule for energy, for each settlement interval, that an entitlement holder submits to an affiliated PGC, subject to the limits on timing and amounts of schedules contained in the capacity auction product descriptions.

(vii) Energy deployed down--The sum of regulation energy down energy deployed and balancing energy service down energy deployed.

(viii) Energy deployed up--The sum of regulation energy up energy deployed, responsive energy deployed, non-spinning energy deployed, and balancing energy service up energy deployed.

(ix) Grouped entitlements--All of the entitlements from an affiliated PGC that an entitlement holder holds for a particular entitlement month.

(x) Grouped ancillary services--The amount of each type of ancillary service available from each entitlement grouped by:

(I) Type of ancillary service;

(II) Type of capacity auction product; and

(III) Congestion zone for those ancillary services that are, or may be, dispatched by congestion zone.

(xi) Hour-ahead schedule--A schedule other than a day-ahead schedule submitted by an entitlement holder to an affiliated PGC no later than one hour before the end of an adjustment period of the entitlement holder's scheduled use of the entitlement for the operating hour corresponding to that adjustment period.

(xii) Non-spinning energy deployed--Energy deployed by ERCOT from the non-spinning reserve service as determined under the procedures in paragraph (2)(B) of this subsection.

(xiii) Product--Electric capacity, energy, capacity auction products or other product(s) related thereto as specified in a transaction by reference to a product listed in the Agreement or as otherwise specified by the parties in a transaction.

(xiv) Regulation energy down deployed--Energy deployed down by ERCOT from the regulation energy service as determined under the procedures of paragraph (2)(B) of this subsection.

(xv) Regulation energy up deployed--Energy deployed up by ERCOT from the regulation service as determined under the procedures of paragraph (2)(B) of this subsection.

(xvi) Responsive energy deployed--Energy deployed by ERCOT from the responsive reserve service as determined under the procedures of paragraph (2)(B) of this subsection.

(xvii) Two-day-ahead schedule--A schedule submitted by the entitlement holder to the affiliated PGC of the entitlement holder's scheduled usage of the entitlement for the operating day two days in the future.

(B) The following terms have the respective meanings given to them in the ERCOT protocols as amended from time to time:

(i) Ancillary services;

(ii) Balancing energy service;

(iii) Congestion zone;

(iv) Non-spinning reserve service;

(v) Operating day;

(vi) Operating hour;

(vii) Regulation service;

(viii) Responsive reserve service;

(ix) Settlement interval; and

(x) Zonal market clearing price.

(2) General provisions.

(A) Responsibility transfers.

(i) The entitlement holder may not use an entitlement for the provision of balancing energy service until a responsibility transfer (RT) between the entitlement holder's QSE and the affiliated PGC's QSE is established and operated in accordance with the ERCOT protocols for the deployment of balancing energy service. The entitlement holder shall establish a separate RT with the affiliated PGC for each congestion zone from which the entitlement holder desires to provide balancing energy service.

(ii) When ERCOT has developed the details and specifications of RTs between QSEs, including without limitation, mechanics, settlement, and communication, then, at the request of the entitlement holder, the parties shall negotiate in good faith to transfer responsibility between their respective QSEs to:

(I) Allow the entitlement holder to provide balancing energy service from the entitlement; and

(II) Allocate the cost of establishing that capability.

(iii) The entitlement holder's QSE shall act as the controller of RTs used for balancing energy service from an entitlement. The entitlement holder's QSE shall use RTs to provide instructions regarding balancing energy service to the affiliated PGC's QSE. These instructions shall comply with all the limitations in the applicable capacity auction product description.

(iv) Both the entitlement holder's QSE and the affiliated PGC's QSE shall enter an inter-QSE trade in accordance with the ERCOT protocols to represent an RT before any operating hour in which the entitlement holder deploys balancing energy service from an entitlement.

(v) The affiliated PGC's QSE is only responsible for complying with RTs sent by the entitlement holder's QSE and is not responsible for ERCOT instructions sent to the entitlement holder.

(vi) The affiliated PGC and the entitlement holder shall rely upon any integration of the RT over each settlement interval performed by ERCOT. If ERCOT does not perform that integration, then the integration shall be performed in a manner mutually agreed to by both parties.

(vii) The entitlement holder is deemed not to have provided any balancing energy service from an entitlement if the affiliated PGC loses or does not receive the balancing energy service signal from ERCOT. The affiliated PGC will promptly notify the entitlement holder if it does not receive or loses the balancing energy service signal from ERCOT.

(B) Deployment of energy from ancillary services. Subject to the limitations and conditions set out in this subsection, and except when the affiliated PGC is excused from hierarchical dispatch by ERCOT of ancillary services under clause (i) or (v) of this subparagraph, ERCOT shall be deemed to have dispatched ancillary services from the entitlements in the entitlement group in a hierarchical order according to the requirements of this subsection. Otherwise, ancillary services shall be dispatched for each entitlement in an entitlement group independently.

(i) Notice of grouped entitlements. Not later than five days before the beginning of an entitlement month, the entitlement holder shall notify the affiliated PGC of all entitlements from the affiliated PGC that are held by the entitlement holder for that entitlement month. The list shall contain sufficient detail for the affiliated PGC to identify the entitlements held by the entitlement holder for that month, including without limitation any unique entitlement number assigned by the affiliated PGC to the entitlement and listed on the letter confirmation for the entitlement. If the affiliated PGC does not timely receive this notice, then the affiliated PGC is excused from its obligation to dispatch ancillary services on a hierarchical basis under this section.

(ii) Amount of ancillary services scheduled from entitlements.

(I) The affiliated PGC shall track the amount of each ancillary service for each operating hour and the amount of each ancillary service scheduled by the entitlement holder for each operating hour, both for individual entitlements and for each grouped entitlement.

(II) For ancillary services other than the balancing energy service, which is determined by an RT, the amount of ancillary service scheduled from each entitlement and for each grouped entitlement for an operating hour is the amount stated in the final timely schedule submitted by the entitlement holder to the affiliated PGC for that operating hour for each entitlement or the entitlement group.

(iii) Deployed ancillary services.

(I) For balancing energy service, the amount of energy that ERCOT is deemed to have deployed is determined by the integration described in subparagraph (A) of this paragraph.

(II) For all ancillary services other than balancing energy service, the affiliated PGC shall track the deployment of ancillary services from the entitlement group by each grouped ancillary service for each hour in the entitlement month, except for hours in which the affiliated PGC is excused from dispatching ancillary services on a hierarchical basis under clause (i) or (v) of this subparagraph. The total amount of each grouped ancillary service deployed in an hour shall be calculated by the product of:

(-a-) The ratio of the amount of the grouped ancillary service scheduled by the entitlement holder from its grouped entitlements to the total amount of that specific ancillary service scheduled from resources in the affiliated PGC's QSE;

(-b-) The amount of energy deployed out of that grouped ancillary service in a particular congestion zone or in ERCOT as a whole, whichever is applicable.

(III) For all ancillary services other than balancing energy service, the amount of each ancillary service that ERCOT is deemed to have deployed from each entitlement, for hours in which the affiliated PGC is excused from dispatching ancillary services on a hierarchical basis under clause (i) or (v) of this subparagraph, shall be calculated by the product of:

(-a-) The ratio of the amount of that ancillary service scheduled by the entitlement holder from the entitlement to the total amount of that specific ancillary service scheduled from resources in the affiliated PGC's QSE;

(-b-) The amount of energy deployed by ERCOT out of that ancillary service in a particular congestion zone or in ERCOT as a whole, whichever is applicable.

(iv) Hierarchical deployment of grouped ancillary services.

(I) For determination of the contract price for each entitlement in a grouped entitlement, ERCOT is deemed to have first deployed grouped ancillary services that are deployed by congestion zone pursuant to subclause (III) of this clause with the amount for each entitlement spread proportionally among the entitlement holder's entitlements of that type in that congestion zone.

(II) After deploying grouped ancillary services by congestion zone pursuant to subclause (I) of this clause, ERCOT is deemed to have deployed the remainder of each grouped ancillary service pursuant to subclause (III) of this clause, with the amount for each type of entitlement spread proportionally among the entitlement holder's entitlements of that type in ERCOT.

(III) Deployed energy shall be assigned to the entitlement holder's entitlements that scheduled those ancillary services on a hierarchical basis as follows:

(-a-) For incremental deployments:

(-1-) First: Baseload entitlements, with the highest priority given to the Baseload entitlements with the lowest energy price;

(-2-) Second: Gas-intermediate entitlements;

(-3-) Third: Gas-cyclic entitlements; and

(-4-) Fourth: Gas-peaking entitlements.

(-b-) For decremental deployments:

(-1-) First: Gas-peaking entitlements;

(-2-) Second: Gas-cyclic entitlements;

(-3-) Third: Gas-intermediate entitlements; and

(-4-) Fourth: Baseload entitlements, with the highest priority given to the Baseload entitlements with the highest energy price.

(v) Exception to dispatching on hierarchical basis. The affiliated PGC is not required to dispatch ancillary services from the entitlement group on a hierarchical basis if the affiliated PGC does not have the information necessary to dispatch ancillary services from the entitlement group in a hierarchical fashion. Necessary information includes, but is not limited to, the signal from ERCOT deploying balancing energy service or the signal from ERCOT deploying other ancillary services.

(3) Baseload product.

(A) Baseload scheduling.

(i) Schedule types. The entitlement holder shall submit a day-ahead schedule for the entitlement. The entitlement holder shall submit a two-day-ahead schedule for the entitlement if notified to do so by ERCOT.

(ii) Timing of scheduling. All of the times for scheduling referred to in this subparagraph are based on the times in the ERCOT protocols. If the times in the ERCOT protocols are changed, then the times in this subparagraph will be considered to have changed to equitably accommodate the changes in the ERCOT protocols.

(I) The entitlement holder shall submit day-ahead or two-day-ahead schedules for the entitlement to the affiliated PGC no later than 8:00 a.m. The entitlement holder shall submit hour-ahead schedules for ancillary services from the entitlement to the affiliated PGC no later than one hour before the deadline for the affiliated PGC's QSE to submit hour-ahead schedules to ERCOT.

(II) On days that ERCOT allows QSEs to change their day-ahead or two-day-ahead schedules to ERCOT by 1:00 p.m. for congestion or capacity insufficiency, the entitlement holder may submit a revised day-ahead or two-day-ahead schedule for energy from the entitlement to the affiliated PGC no later than noon.

(III) The entitlement holder may submit to the affiliated PGC a revised day-ahead or two-day-ahead schedule for the non-spinning reserve ancillary services from the entitlement no later than 1:45 p.m. The entitlement holder cannot change the amount of energy scheduled in a revised schedule for the non-spinning reserve ancillary services.

(IV) No hour-ahead schedules are permitted for energy from baseload entitlements. Hour-ahead schedules are permitted for ancillary services from baseload entitlements.

(iii) Schedule content. Each schedule shall specify, for each settlement interval, the MW of energy scheduled to be delivered to the entitlement holder from the entitlement and the MW of each permitted ancillary service to be scheduled from the entitlement, subject to the scheduling limits in clause (iv) of this subparagraph.

(iv) Scheduling limits.

(I) Minimum energy. The entitlement holder may not schedule energy at less than 20 MW from the entitlement at any time during the month.

(II) Ancillary services. The entitlement holder may use a baseload entitlement to provide responsive reserve service at a level of one MW, and non-spinning reserve service, up to a combined total of three MW. The baseload entitlement may not be used for any other ancillary service. Non-spinning reserve service may be provided from the entitlement in 30 minutes, and responsive reserve service may be provided from the entitlement in ten minutes.

(III) Maximum changes. Subject to the minimum energy rate specified in subclause (I) of this clause, the rate at which the entitlement holder schedules energy in each hour generally cannot change more than plus or minus two MW. The following additional restrictions apply.

(-a-) If the entitlement holder schedules or reserves any ancillary services in an hour, then the level of energy scheduled shall be the same in each settlement interval of the hour.

(-b-) The maximum change in ancillary services scheduled from the first settlement interval in one hour to the first settlement interval of the next hour is plus or minus three MW.

(-c-) The maximum change in energy scheduled from the first settlement interval in one hour to the first settlement interval in the next hour is plus or minus two MW.

(-d-) The maximum change in energy scheduled from one settlement interval to the next is plus or minus one MW.

(IV) Starts. The entitlement holder shall schedule energy from a baseload entitlement for every settlement interval and may not direct any starts of the entitlement.

(V) Default schedule. If the entitlement holder does not submit a timely day-ahead or two-day ahead schedule, as applicable, then the schedule for the applicable operating day is deemed to be 20 MW of energy and zero MW of ancillary services to be delivered to the entitlement holder's designated default QSE in every settlement interval of the applicable operating day.

(B) Contract price for baseload. The items included in the contract price between the entitlement holder and the affiliated PGC for the entitlement shall include:

(i) Capacity payment. The capacity payment from the entitlement holder to the affiliated PGC is the capacity price in dollars per MW specified in the letter confirmation for the entitlement times 25 MW.

(ii) Energy payment. The fuel cost owed to the affiliated PGC by the entitlement holder for the dispatched baseload power will be the average cost of coal, lignite, and nuclear fuel (in dollars per MWh), as applicable to the appropriate congestion zone in which the underlying generation units are located, based on the affiliated PGC's final excess cost over market (ECOM) model as determined pursuant to PURA §39.201. Affiliated PGCs of the electric utilities without an ECOM determination in their proceeding conducted pursuant to PURA §39.201 shall propose, for commission review, an average cost of fuel in a similar manner. The energy payment from the entitlement holder to the affiliated PGC is the fuel cost in dollars per MWh for the entitlement times the greater of:

(I) The sum of the total energy scheduled from the entitlement during the entitlement month plus energy deployed up from the entitlement during the entitlement month; or

(II) An amount of MWh equal to 20 MW times the number of hours in the entitlement month.

(iii) Ancillary services payment. For baseload entitlements, the ancillary services payment to be paid by the entitlement holder to the affiliated PGC is zero.

(iv) Energy deployed up reimbursement payment. For energy deployed up, for all settlement intervals in the entitlement month, the affiliated PGC shall pay the entitlement holder the sum of the zonal market clearing price of energy (MCPE) in dollars per MWh paid by ERCOT for that settlement interval times the energy deployed up in that settlement interval.

(v) Energy deployed down reimbursement payment. For energy deployed down for all settlement intervals in the entitlement month, the entitlement holder shall pay the affiliated PGC the sum of the MCPE in dollars per MWh paid to ERCOT for that settlement interval times the energy deployed down in that settlement interval.

(C) Timing of payment of contract price. The entitlement holder shall pay the affiliated PGC the capacity payment portion of the contract price not less than five days before the beginning of the entitlement month or 20 days after receiving an invoice for the capacity payment from the affiliated PGC, whichever is later. The entitlement holder shall pay the remainder of the contract price to the affiliated PGC after receiving an invoice for that amount in accordance with the other terms of the applicable Agreement. If the affiliated PGC owes the entitlement holder any net amount under the contract price calculation, it will pay that amount to the entitlement holder in accordance with the other terms of the Agreement.

(4) Gas-intermediate product.

(A) Gas-intermediate scheduling.

(i) Schedule types. The entitlement holder shall submit a day-ahead schedule for the entitlement and may submit hour-ahead schedules. The entitlement holder shall submit a two-day-ahead schedule for the entitlement if notified to do so by ERCOT.

(ii) Timing of scheduling. All of the times for scheduling referred to in this subparagraph are based on the times in the ERCOT protocols. If the times in the ERCOT protocols are changed, then the times in this subparagraph will be considered to have changed to equitably accommodate the changes in the ERCOT protocols.

(I) The entitlement holder shall submit day-ahead or two-day-ahead schedules for the entitlement to the affiliated PGC no later than 8:00 a.m. The daily capacity commitment is determined for a gas-intermediate entitlement by the 8:00 a.m. schedule. The entitlement holder shall submit hour-ahead schedules for ancillary services for the entitlement to the affiliated PGC no later than one hour before the deadline for the affiliated PGC's QSE to submit hour-ahead schedules to ERCOT.

(II) The entitlement holder may submit to the affiliated PGC a revised day-ahead or two-day-ahead schedule for energy from the entitlement no later than 10:00 a.m., subject to the limit on maximum energy in clause (iv)(I)(-b-) of this subparagraph.

(III) On days that ERCOT allows QSEs to change their day-ahead or two-day-ahead schedules to ERCOT by 1:00 p.m. for congestion or capacity insufficiency, the entitlement holder may submit a revised day-ahead or two-day-ahead schedule for energy from the entitlement to the affiliated PGC no later than noon, subject to the limit on maximum energy in clause (iv)(I)(-b-) of this subparagraph.

(IV) The entitlement holder may submit to the affiliated PGC a revised day-ahead or two-day-ahead schedule for ancillary services from the entitlement no later than 1:45 p.m. The entitlement holder cannot change the amount of energy scheduled in a revised schedule for ancillary services.

(V) No hour-ahead schedules are permitted for energy from gas-intermediate entitlements. Hour-ahead schedules are permitted for ancillary services from gas-intermediate entitlements.

(iii) Schedule content. Each schedule shall specify:

(I) For each settlement interval, the MW of energy scheduled to be delivered to the entitlement holder from the entitlement; and

(II) For each hour, the MW scheduled to be reserved for the entitlement holder's use of each ancillary service from the entitlement. The entitlement holder shall include any MW bid (but not pricing) for the balancing energy up and balancing energy down ancillary services on the schedule.

(iv) Scheduling limits.

(I) Total. Generally, the rate at which energy is scheduled cannot change more than plus or minus six MW and the rate at which ancillary services is reserved or scheduled by the entitlement holder in each hour cannot change more than plus or minus six MW. The restrictions in items (-a-) and (-b-) of this subclause apply.

(-a-) Minimum energy. The entitlement holder may not schedule energy at less than eight MW from the entitlement at any time during the month, unless the entitlement holder has elected the gas-intermediate Start Option, in which case the entitlement holder may reduce energy below eight MW as specified in subclause (IV)(-a-) of this clause.

(-b-) Maximum energy. The entitlement holder may not schedule energy at any level greater than the daily capacity commitment in any settlement interval.

(II) Maximum changes. Subject to the limitations specified in subclause (I) of this clause:

(-a-) Generally, the rate at which energy is scheduled by the entitlement holder in each hour cannot change more than plus or minus six MW and the rate at which ancillary services are scheduled or reserved by the entitlement holder in each hour cannot change more than plus or minus six MW. The restrictions in items (-b-) and (-c-) apply.

(-b-) Energy. Subject to the maximum change specified in item (-a-) of this subclause:

(-1-) The maximum change in energy scheduled from the first settlement interval in one hour to the first settlement interval of the next hour is plus or minus six MW.

(-2-) Subject to the limitation in subitem (-1-) of this item, the maximum change in energy scheduled from one settlement interval to the next is plus or minus two MW.

(-c-) Ancillary services. Subject to the maximum change specified in item (-a-) of this subclause, the maximum change in ancillary services scheduled from the first settlement interval in one hour to the first settlement interval of the next hour is plus or minus six MW.

(III) Ancillary services. Subject to the limitations in subclauses (I) and (II) of this clause:

(-a-) The total MW of non-spinning reserve service, regulation service up, regulation service down, responsive reserve service, and balancing energy service up and balancing energy service down from the entitlement in one hour shall not exceed ten MW;

(-b-) Subject to the limitations in item (-a-) of this subclause, the total MW of regulation service up, regulation service down, responsive reserve service, and bids for balancing energy service up and balancing energy service down from the entitlement in one hour shall not exceed:

(-1-) Four MW if the entitlement holder schedules any two-MW changes in the levels of energy within the hour;

(-2-) Five MW if the entitlement holder schedules any one-MW, but not two-MW changes in the levels of energy within the hour; or

(-3-) Six MW if the entitlement holder does not schedule any changes in the levels of energy within the hour.

(-c-) In addition to the limitations in items (-a-) and (-b-) of this subclause, the total MW of non-spinning reserve service, regulation service up, responsive reserve service, and balancing energy service up from the entitlement in a settlement interval shall not exceed an amount of MW equal to the daily capacity commitment for the settlement interval minus the energy scheduled for that settlement interval.

(-d-) In addition to the limitations in items (-a-), (-b-), and (-c-) of this subclause, the total MW of regulation service down and balancing energy service down from the entitlement in a settlement interval shall not exceed an amount of MW equal to the energy scheduled for that settlement interval minus eight MW.

(-e-) In addition to the limitations in items (-a-), (-b-), and (-c-) of this subclause, if the energy schedule is at zero as permitted under subclause (IV)(-a-) of this clause, then the entitlement holder may not schedule any ancillary services from the gas-intermediate entitlement.

(-f-) Non-spinning reserve service may be provided from the entitlement in 30 minutes, and other permitted ancillary services may be provided from the entitlement in ten minutes.

(IV) Starts, minimum off time, and minimum run time.

(-a-) The entitlement holder may reduce the energy schedule from the gas-intermediate entitlement to zero MW two times during the entitlement month.

(-b-) Once the energy schedule is reduced to zero, it shall remain at zero for not less than 48 hours.

(-c-) If the entitlement holder increases the energy schedule from zero, then energy shall be scheduled at a minimum of eight MW, and the energy schedule may not be reduced to zero again for at least 72 hours after the energy schedule increased from zero.

(v) Default schedule. If the entitlement holder does not submit a timely day-ahead or two-day ahead schedule, as applicable, then the schedule, for the applicable operating day is deemed to be, in every settlement interval of the applicable operating day, eight MW for the daily capacity commitment, eight MW of energy to be delivered to the entitlement holder's designated default QSE, and zero MW of ancillary services, and that deemed schedule may not be changed in any hour-ahead schedule. However, if the entitlement holder has used up its allowable starts for the entitlement month, then the schedule for the applicable operating day is deemed to be, in every settlement interval of the applicable operating day, zero MW for the daily capacity commitment.

(B) Gas-intermediate ancillary services. Subject to the scheduling limits in subparagraph (A) of this paragraph, the entitlement holder may use the entitlement in any one hour for one or more of these ancillary services: regulation service up, regulation service down, responsive reserve service, non-spinning reserve service, balancing energy service up, and balancing energy service down. When ERCOT requires mandatory balancing energy down bids, then the affiliated PGC shall so notify the entitlement holder, and the entitlement holder shall then submit a balancing energy down bid to ERCOT in the same percentage that ERCOT requires of the affiliated PGC, subject to the MW limits for gas-intermediate in the applicable Schedule CA of the applicable Agreement.

(C) Contract price for gas-intermediate. The items included in the contract price between the entitlement holder and the affiliated PGC for the entitlement shall include:

(i) Capacity payment. The capacity payment from the entitlement holder to the affiliated PGC is the capacity price in dollars per MW specified in the letter confirmation for the entitlement times 25 MW.

(ii) Energy payment.

(I) The energy payment from the entitlement holder to the affiliated PGC for each settlement interval in the entitlement month, is the sum of the minimum energy payment and the excess energy payment.

(-a-) The minimum energy payment is the product of the number of hours in the entitlement month at which the energy level is not zero as permitted under subparagraph (A)(iv)(IV)(-a-) of this paragraph, times eight MWh, times the minimum fuel price.

(-b-) The excess energy payment for each settlement interval is the excess fuel price defined in subclause (II)(-b-) of this clause, times (energy scheduled minus two MWh plus energy deployed up minus energy deployed down).

(II) Fuel price.

(-a-) The minimum fuel price is a heat rate equal to 9.9 Million British Thermal Units (MMBtu) per MWh times the daily gas price.

(-b-) The excess fuel price is a heat rate equal to 9.9 MMBtu per MWh times the daily gas price.

(iii) Ancillary services payment.

(I) The ancillary services cost adjustment payment to be paid by the entitlement holder to the affiliated PGC is the ancillary services cost defined in subclause (II) of this clause times the difference, for each settlement interval of the entitlement, between the daily capacity commitment and energy scheduled.

(II) The ancillary services cost is a heat rate adjustment equal to 1.015 MMBtu per MW times the daily gas price.

(iv) Energy deployed up reimbursement payment. For energy deployed up for all settlement intervals in the entitlement month, the affiliated PGC shall pay the entitlement holder the MCPE in dollars per MWh paid by ERCOT for a settlement interval times the energy deployed up in a settlement interval.

(v) Energy deployed down reimbursement payment. For energy deployed down for all settlement intervals in the entitlement month, the entitlement holder shall pay the affiliated PGC the MCPE in dollars per MWh paid to ERCOT for a settlement interval times the energy deployed down in a settlement interval.

(D) Timing of payment of contract price. The entitlement holder shall pay the affiliated PGC the capacity payment portion of the contract price not less than five days before the beginning of the entitlement month or 20 days after receiving an invoice for the capacity payment from the affiliated PGC, whichever is later. The entitlement holder shall pay the remainder of the contract price after receiving an invoice for that amount in accordance with the Agreement. If the affiliated PGC owes the entitlement holder any net amount under the contract price calculation, it will pay that amount to the entitlement holder in accordance with the Agreement.

(5) Gas-cyclic.

(A) Gas-cyclic scheduling.

(i) Schedule types. The entitlement holder shall submit a day-ahead schedule for the entitlement and may submit hour-ahead schedules for both energy and ancillary services. The entitlement holder shall submit a two-day-ahead schedule for the entitlement if notified to do so by ERCOT.

(ii) Timing of scheduling. All of the times for scheduling referred to in this subparagraph are based on the times in the ERCOT protocols. If the times in the ERCOT protocols are changed, then the times in this subparagraph will be considered to have changed to equitably accommodate the changes in the ERCOT protocols.

(I) The entitlement holder shall submit day-ahead or two-day-ahead schedules for the entitlement to the affiliated PGC no later than 8:00 a.m. The daily capacity commitment is determined for a gas-cyclic entitlement by the 8:00 a.m. schedule, unless the entitlement holder notifies the affiliated PGC, in the schedule, that it is exercising its option to set the daily capacity commitment in the last schedule submitted before the gas-cyclic start deadline defined in subclause (V) of this clause. The entitlement holder shall submit hour-ahead schedules for the entitlement to the affiliated PGC no later than one hour before the deadline for the affiliated PGC's QSE to submit hour-ahead schedules to ERCOT.

(II) The entitlement holder may submit to the affiliated PGC a revised day-ahead or two-day-ahead schedule for energy from the entitlement no later than 10:00 a.m.

(III) On days that ERCOT allows QSEs to change their day-ahead or two-day ahead schedules to ERCOT by 1:00 p.m. for congestion or capacity insufficiency, the entitlement holder may submit a revised day-ahead or two-day-ahead schedule for energy from the entitlement to the affiliated PGC no later than noon.

(IV) The entitlement holder may submit to the affiliated PGC a revised day-ahead or two-day-ahead schedule for ancillary services from the entitlement no later than 1:45 p.m.

(V) The gas-cyclic start deadline for declaring the daily capacity commitment for each settlement interval in an operating hour is 14 hours before the end of the adjustment period for that operating hour.

(iii) Schedule content. Each schedule shall specify:

(I) For each settlement interval, the MW of energy scheduled to be delivered to the entitlement holder from the entitlement; and

(II) For each hour, the MW scheduled to be reserved for the entitlement holder's use of each ancillary service from the entitlement. The entitlement holder shall include any MW bid (but not pricing) for the balancing energy up and balancing energy down ancillary services on the schedule.

(iv) Scheduling limits.

(I) Total. Generally, the rate at which energy is scheduled cannot change more than plus or minus six MW and the rate at which ancillary services is reserved or scheduled by the entitlement holder in each hour cannot change more than plus or minus six MW. The restrictions in items (-a-) and (-b-) of this subclause apply.

(-a-) Minimum energy. The entitlement holder may not schedule energy at any level between zero MW and five MW from the entitlement at any time during the month.

(-b-) Maximum energy. The entitlement holder may not schedule energy at any level greater than the daily capacity commitment in any settlement interval after the entitlement holder designates its daily capacity commitment.

(II) Maximum changes. Subject to the limits specified in subclause (I) of this clause:

(-a-) The maximum change in the rate at which energy is scheduled from the first settlement interval in one hour to the first settlement interval in the next hour is plus or minus six MW;

(-b-) Subject to the limitation in item (-a-) of this subclause, the maximum change in the rate at which energy is scheduled from one settlement interval to the next is plus or minus two MW; and

(-c-) Subject to the limitation specified in item (-a-) of this subclause, the maximum change in ancillary services scheduled from the first settlement interval in one hour to the first settlement interval of the next hour is plus or minus six MW.

(III) Ancillary services. Subject to the limitations in subclauses (I) and (II) of this clause:

(-a-) The total MW of non-spinning reserve service, regulation service up, regulation service down, responsive reserve service, and balancing energy service up and balancing energy service down from the entitlement in one hour shall not exceed ten MW;

(-b-) Subject to the limitations in item (-a-) of this subclause, the total MW of regulation service up, regulation service down, responsive reserve service, and bids for balancing energy service up and balancing energy service down from the entitlement in one hour shall not exceed:

(-1-) Four MW if the entitlement holder schedules any two-MW changes in the levels of energy within the hour;

(-2-) Five MW if the entitlement holder schedules any one-MW, but not two-MW changes in the levels of energy within the hour; or

(-3-) Six MW if the entitlement holder does not schedule any changes in the levels of energy within the hour.

(-c-) In addition to the limitations in items (-a-) and (-b-) of this subclause, the total MW of non-spinning reserve service, regulation service up, responsive reserve service, and balancing energy service up from the entitlement in a settlement interval shall not exceed an amount of MW equal to the daily capacity commitment for the settlement interval minus the energy scheduled for that settlement interval.

(-d-) In addition to the limitations in items (-a-), (-b-), and (-c-) of this subclause, the total MW of regulation service down and balancing energy service down from the entitlement in a settlement interval shall not exceed an amount of MW equal to the energy scheduled for that settlement interval minus five MW.

(-e-) Non-spinning reserve service may be provided from the entitlement in 30 minutes, and other permitted ancillary services may be provided from the entitlement in ten minutes.

(IV) Starts. Subject to the limits specified in subclause (I) - (III) of this clause, the entitlement holder may not direct more than 20 starts during the month of the entitlement, and the entitlement holder may not direct more than one start per day. A start occurs every time a schedule increases the MW of energy from zero MW. Once 20 starts have occurred during the entitlement, the energy scheduled by the entitlement holder may not be lower than a rate of five MW unless that level is lowered to zero MW, at which time the level may not be raised above zero MW for the remainder of the entitlement.

(v) Default schedule. If the entitlement holder does not submit a timely day-ahead or two-day ahead schedule, as applicable, then the schedule for the applicable operating day is deemed to be, in every settlement interval of the applicable operating day, zero MW for the daily capacity commitment, zero MW of energy, and zero MW of ancillary services. This deemed schedule may not be changed in any hour-ahead schedule.

(B) Gas-cyclic ancillary services. Subject to the scheduling limits in subparagraph (A) of this paragraph, the entitlement holder may use the entitlement in any one hour for one or more of these ancillary services: regulation service up, regulation service down, responsive reserve service, non-spinning reserve service, balancing energy service up, and balancing energy service down. When ERCOT requires mandatory balancing energy service down bids, then the affiliated PGC shall so notify the entitlement holder, and the entitlement holder shall then submit a balancing energy service down bid in the same percentage that ERCOT requires of the affiliated PGC, subject to the MW limits for gas-cyclic in this paragraph.

(C) Contract price for gas-cyclic. The items to be included in the contract price between the entitlement holder and the affiliated PGC for the entitlement shall include:

(i) Capacity payment. The capacity payment from the entitlement holder to the affiliated PGC is the capacity price in dollars per MW specified in the letter confirmation for the entitlement times 25 MW.

(ii) Energy payment.

(I) The energy payment for each settlement interval from the entitlement holder to the affiliated PGC is the fuel price defined in subclause (II) of this clause times (energy scheduled plus energy deployed up minus energy deployed down.)

(II) Fuel price.

(-a-) The fuel price, for the portion of the daily capacity commitment that is designated by the entitlement holder by 8:00 a.m. in the day-ahead or two-day-ahead schedule, is a heat rate equal to 12.100 MMBtu per MWh times the daily gas price.

(-b-) The fuel price, for the portion of the daily capacity commitment that is not released or committed at 8:00 a.m., but is committed before the gas-cyclic start deadline, is a heat rate equal to 12.100 MMBtu per MWh times (the sum of the daily gas price plus $.25.)

(iii) Ancillary services payment.

(I) The ancillary services payment to be paid by the entitlement holder to the affiliated PGC is the product of the ancillary services cost defined in subclause (II) of this clause times the difference, for each settlement interval of the entitlement, between the daily capacity commitment and energy scheduled.

(II) The ancillary services cost is a heat rate adjustment equal to 1.622 MMBtu per MW times the daily gas price.

(iv) Energy deployed up reimbursement payment. For energy deployed up, for all settlement intervals in the entitlement month, the affiliated PGC shall pay the entitlement holder the MCPE in dollars per MWh paid by ERCOT for a settlement interval times the energy deployed up in a settlement interval.

(v) Energy deployed down reimbursement payment. For energy deployed down for all settlement intervals in the entitlement month, the entitlement holder shall pay the affiliated PGC the MCPE in dollars per MWh paid to ERCOT for a settlement interval times the energy deployed down in a settlement interval.

(D) Timing of payment of contract price. The entitlement holder shall pay the affiliated PGC the capacity payment portion of the contract price not less than five days before the beginning of the entitlement month or 20 days after receiving an invoice for the capacity payment from the affiliated PGC, whichever is later. The entitlement holder shall pay the remainder of the contract price after receiving an invoice for that amount in accordance with the other terms of the Agreement. If the affiliated PGC owes the entitlement holder any net amount under the contract price calculation, it will pay that amount to the entitlement holder in accordance with the other terms of the Agreement.

(6) Gas-peaking.

(A) Gas-peaking scheduling.

(i) Schedule types. The entitlement holder shall submit a day-ahead schedule for the entitlement and may submit hour-ahead schedules. The entitlement holder shall submit a two-day-ahead schedule for the entitlement if notified to do so by ERCOT.

(ii) Timing of scheduling. All of the times for scheduling referred to in this subparagraph are based on the times in the ERCOT protocols. If the times in the ERCOT protocols are changed, then the times in this subparagraph will be considered to have changed to equitably accommodate the changes in the ERCOT protocols.

(I) The entitlement holder shall submit day-ahead or two-day-ahead schedules for the entitlement to the affiliated PGC no later than 8:00 a.m. The daily capacity commitment is determined for a gas-peaking entitlement by the 8:00 a.m. schedule, unless the entitlement holder notifies the affiliated PGC, in the schedule, that it is exercising its option to set the daily capacity commitment in the last schedule submitted before the gas-peaking start deadline defined in subclause (V) of this clause. The entitlement holder shall submit hour-ahead schedules for the entitlement to the affiliated PGC no later than one hour before the deadline for the affiliated PGC's QSE to submit hour-ahead schedules to ERCOT.

(II) The entitlement holder may submit to the affiliated PGC a revised day-ahead or two-day-ahead schedule for energy from the entitlement no later than 10:00 a.m.

(III) On days that ERCOT allows QSEs to change their day-ahead or two-day ahead schedules to ERCOT by 1:00 p.m. for congestion or capacity insufficiency, the entitlement holder may submit a revised day-ahead or two-day-ahead schedule for energy from the entitlement to the affiliated PGC no later than noon.

(IV) The entitlement holder may submit to the affiliated PGC a revised day-ahead or two-day-ahead schedule for the non-spinning reserve service from the entitlement no later than 1:45 p.m.

(V) The gas-peaking start deadline for declaring the daily capacity commitment for each settlement interval in an operating hour is one hour before the end of the adjustment period for that operating hour.

(iii) Schedule content. Each schedule shall specify:

(I) For each settlement interval, the MW of energy scheduled to be delivered to the entitlement holder from the entitlement; and

(II) For each hour, the MW scheduled to be reserved for the entitlement holder's use of the non-spinning reserve service from the entitlement.

(iv) Scheduling limits.

(I) Total.

(-a-) The rate at which energy is scheduled or ancillary services reserved or scheduled by the entitlement holder in each settlement interval during an hour shall be either zero MW or 25 MW and cannot change during the hour.

(-b-) Subject to the requirement of item (-a-) of this subclause, if the entitlement holder schedules any energy from the entitlement in an hour, the rate at which energy is scheduled shall continue uninterrupted at a level of 25 MW for not less than four hours.

(-c-) Subject to the requirements of items (-a-) and (-b-) of this subclause, when the entitlement holder decreases a schedule for energy to zero MW from the entitlement in an hour, the rate at which energy is scheduled or at which ancillary services is scheduled or reserved shall continue uninterrupted at a level of zero MW for not less than two hours.

(II) Starts. The number of starts of the entitlement is not limited.

(v) Default schedule. If the entitlement holder does not submit a timely day-ahead or two-day ahead schedule, as applicable, then the schedule, for the applicable operating day is deemed to be, in every settlement interval of the applicable operating day, zero MW for the daily capacity commitment, zero MW of energy, and zero MW of the non-spinning reserve service. This deemed schedule may not be changed in any revised day-ahead or two-day ahead schedule, or in any hour-ahead schedule.

(B) Gas-peaking ancillary services. The entitlement holder may not use the entitlement for any ancillary service except the non-spinning reserve service.

(C) Contract price for gas-peaking. The items to be included in the contract price between the entitlement holder and the affiliated PGC for the entitlement shall include:

(i) Capacity payment. The capacity payment from the entitlement holder to the affiliated PGC is the capacity price in dollars per MW specified in the letter confirmation for the entitlement times 25 MW.

(ii) Energy payment.

(I) The energy payment for each settlement interval, from the entitlement holder to the affiliated PGC is the fuel price defined in subclause (II) of this clause times (energy scheduled plus non-spinning energy deployed plus non-spinning energy instructed deviation.)

(II) Fuel price.

(-a-) The fuel price, for operating days for which the entitlement holder designated its daily capacity commitment by 8:00 a.m. in the day-ahead or two-day ahead schedule, is a heat rate equal to 14.100 MMBtu per MWh times the daily gas price.

(-b-) The fuel price, for operating days for which the entitlement holder exercises its option to designate its daily capacity commitment after 8:00 a.m. and before the gas-peaking start deadline, is a heat rate equal to 14.100 MMBtu per MWh times the sum of the daily gas price plus $.25.

(iii) Ancillary services payment. The ancillary services payment to be paid by the entitlement holder to the affiliated PGC is the product of $1.00 per MW times the total number of MW of non-spinning reserve service scheduled during each hour of the entitlement month.

(iv) Ancillary services reimbursement payment. The ancillary services reimbursement payment from the affiliated PGC to the entitlement holder is the sum of the MCPE for energy in dollars per MWh paid by ERCOT for each MWh of non-spinning energy deployed and the price that ERCOT pays for uninstructed deviations for each MWh of non-spinning energy uninstructed deviation.

(D) Timing of payment of contract price. The entitlement holder shall pay the affiliated PGC the capacity payment portion of the contract price not less than five days before the beginning of the entitlement month or 20 days after receiving an invoice for the capacity payment from the affiliated PGC, whichever is later. The entitlement holder shall pay the remainder of the contract price after receiving an invoice for that amount in accordance with the other terms of the Agreement. If the affiliated PGC owes the entitlement holder any net amount under the contract price calculation, it will pay that amount to the entitlement holder in accordance with the other terms of the Agreement.

(g) Product descriptions for capacity in non-ERCOT areas. The provisions in this subsection apply to capacity auctions in non-ERCOT areas. Subsection (f) of this section contains provisions applicable to capacity auctions in ERCOT.

(1) Definitions. The following words and terms when used in this subsection shall have the following meanings unless the context indicates otherwise:

(A) Daily capacity commitment - The amount of capacity scheduled by the entitlement holder that a seller shall make available for the provision of energy from an entitlement.

(B) Day ahead schedule - A schedule submitted by the entitlement holder to a seller of the entitlement holder's scheduled usage of the entitlement for the following operating day.

(C) Energy scheduled - For each settlement interval, the final schedule for energy that the entitlement holder submits to a seller, subject to the limits on timing and amounts of schedules contained in this subsection.

(D) Grouped entitlements - All of the entitlements from a seller that the entitlement holder holds for a particular entitlement month.

(E) Hour-ahead schedule - A schedule other than a day-ahead schedule submitted by the entitlement holder to a seller of the entitlement holder's scheduled usage of the entitlement for the following operating hour.

(2) Baseload product.

(A) Description. For each baseload capacity entitlement, the scheduled power shall be provided to the entitlement holder during the month of the entitlement seven days per week and 24 hours per day, in accordance with the scheduling requirements and limitations provided in subparagraph (E) of this paragraph.

(B) Block size. Each baseload capacity entitlement shall be 25 MW in size.

(C) Fuel price. The fuel cost owed to the affiliated PGC by the entitlement holder for the dispatched baseload power will be the average cost of coal, lignite, and nuclear fuel, in dollars per MWh, based on the company's final ECOM model as determined in the proceeding pursuant to PURA §39.201 as projected for the relevant time period. Electric utilities without an ECOM determination in their proceeding conducted pursuant to PURA §39.201 shall propose for commission review an average cost of fuel in a similar manner.

(D) Starts per month. The entitlement holder of a baseload capacity entitlement shall take power from the entitlement seven days per week and 24 hours per day and is therefore not permitted to direct the affiliated PGC to make any starts of baseload capacity entitlements.

(E) Baseload scheduling.

(i) Schedule types. The entitlement holder shall submit a day-ahead schedule for the entitlement.

(ii) Timing of scheduling.

(I) The entitlement holder shall submit day-ahead schedules for the entitlement to the seller no later than 8:00 a.m. The daily capacity commitment is determined for a baseload entitlement by the 8:00 a.m. schedule.

(II) The entitlement holder may submit to the seller a revised day-ahead schedule for energy from the entitlement no later than noon, subject to the limit on maximum energy in clause (iv)(II) of this subparagraph.

(III) No hour-ahead schedules are permitted for energy from baseload entitlements.

(iii) Schedule content. Each schedule shall specify, for each scheduling interval, subject to the scheduling limits in clause (iv) of this subparagraph, the energy scheduled to be delivered to the entitlement holder from the entitlement.

(iv) Scheduling limits.

(I) Minimum energy. The entitlement holder may not schedule energy at less than 20 MW from the entitlement at any time during the month.

(II) Maximum energy. The entitlement holder may not schedule energy at any level greater than the daily capacity commitment in any scheduling interval.

(III) Maximum changes. Subject to the minimum energy rate specified in subclause (I) of this clause:

(-a-) Total. Generally, the rate at which energy is scheduled by the entitlement holder in each hour cannot change more than plus or minus two MW.

(-b-) Energy. Subject to the maximum change specified in item (-a-) of this subclause, the maximum change in energy scheduled from one scheduling interval to the next scheduling interval cannot exceed plus or minus two MW.

(v) Default schedule. If the entitlement holder does not submit a timely day-ahead schedule, as applicable, then the schedule for the applicable operating day shall be deemed to be, in every settlement interval of the applicable operating day, a total of 20 MW for the daily capacity commitment.

(F) Contract price for baseload. The items to be included in the contract price between the entitlement holder and the affiliated PGC for the entitlement shall include:

(i) Capacity payment. The capacity payment from the entitlement holder to the affiliated PGC is the capacity price in dollars per MW specified in the letter confirmation for the entitlement times 25 MW.

(ii) Energy payment. The fuel price is as specified on the letter confirmation for the entitlement. The energy payment from the entitlement holder to the affiliated PGC is the fuel price in dollars per MWh specified in the letter confirmation for the entitlement times the greater of:

(I) The total energy scheduled from the entitlement during the entitlement month; or

(II) An amount of MWh equal to 20 MW times the number of hours in the entitlement month.

(G) Timing of payment of contract price. The entitlement holder shall pay the affiliated PGC the capacity payment portion of the contract price not less than five days before the beginning of the entitlement month or 20 days after receiving an invoice for the capacity payment from the affiliated PGC, whichever is later. The entitlement holder shall pay the remainder of the contract price to the affiliated PGC after receiving an invoice for that amount in accordance with the other terms of the Agreement. If the affiliated PGC owes the entitlement holder any net amount under the contract price calculation, it will pay that amount to the entitlement holder in accordance with the other terms of the Agreement.

(3) Gas-intermediate product.

(A) Description. For each gas-intermediate capacity entitlement, not less than 30% of the entitlement shall be provided to the entitlement holder at any time when any of the entitlement is being scheduled by the entitlement holder , with the remainder of the block scheduled as day-ahead shaped power in accordance with the scheduling requirements and limitations provided in subparagraph (E) of this paragraph.

(B) Block size. Each gas-intermediate capacity entitlement shall be 25 MW in size.

(C) Fuel price.

(i) Except as specified otherwise in clause (ii) of this subparagraph, the fuel cost owed to the affiliated PGC by the entitlement holder for the gas-intermediate capacity dispatched will be 10.850 MMBtu per MWh heat rate times the minimum MWh that shall be taken for gas-intermediate capacity as required in subparagraph (A) of this paragraph times the first-of-the-month index posted in the publication "Inside FERC" for the Houston Ship Channel for the month of the entitlement. For power dispatched above the minimum MWh required, the additional fuel price owed to the affiliated PGC will be 10.850 MMBtu per MWh times the MWh of gas-intermediate power dispatched pursuant to the entitlement above the minimum requirement times the daily gas price.

(ii) EGSI.

(I) For EGSI gas-intermediate capacity in the eastern congestion zone, the fuel cost owed to its affiliated PGC by the capacity entitlement holder for the gas-intermediate capacity dispatched will be 10.850 MMBtu per MWh heat rate times the minimum MWh that shall be taken for gas-intermediate capacity as required in subparagraph (A) of this paragraph times the first-of-the-month index posted in the publication "Inside FERC" for Henry Hub for the month of the entitlement. For power dispatched above the minimum MWh required, the additional fuel price owed to the affiliated PGC will be 10.850 MMBtu per MWh times the MWh of gas-intermediate power dispatched pursuant to the entitlement above the minimum requirement times the Henry Hub daily gas price.

(II) For EGSI gas-intermediate capacity in the western congestion zone, the fuel cost owed to its affiliated PGC by the capacity entitlement holder for the gas-intermediate capacity dispatched will be 10.850 MMBtu per MWh heat rate times the minimum MWh that shall be taken for gas-intermediate capacity as required in subparagraph (A) of this paragraph times the average of the first-of-the-month index posted in the publication "Inside FERC" for Henry Hub for the month of the entitlement and the first-of-the-month index posted in the publication "Inside FERC" for the Houston Ship Channel for the month of the entitlement. For power dispatched above the minimum MWh required, the additional fuel price owed to the affiliated PGC will be 10.850 MMBtu per MWh times the MWh of gas-intermediate power dispatched pursuant to the entitlement above

the minimum requirement times the average of the Henry Hub daily gas price and the Houston Ship Channel daily gas price.

(D) Starts per month. The entitlement holder of gas-intermediate capacity shall take a minimum of 30% of the power from the entitlement in each interval and is therefore not permitted to direct the affiliated PGC to make any starts of gas intermediate capacity entitlements.

(E) Gas-intermediate scheduling.

(i) Schedule types. The entitlement holder shall submit a day-ahead schedule for the entitlement.

(ii) Timing of scheduling.

(I) The entitlement holder shall submit day-ahead schedules for the entitlement to the seller no later than 8:00 a.m. The daily capacity commitment is determined for a gas-intermediate entitlement by the 8:00 a.m. schedule.

(II) The entitlement holder may submit to seller a revised day-ahead schedule for energy from the entitlement no later than noon, subject to the limit on maximum energy in clause (iv)(II) of this subparagraph.

(III) No hour-ahead schedules are permitted for energy from gas-intermediate entitlements.

(iii) Schedule content. Each schedule shall specify, for each scheduling interval, the energy scheduled to be delivered to the entitlement holder from the entitlement.

(iv) Scheduling limits.

(I) Minimum energy. The entitlement holder may not schedule energy at less than eight MW from the entitlement at any time during the month.

(II) Maximum energy. The entitlement holder may not schedule energy at a level greater than the daily capacity commitment in any scheduling interval.

(III) Maximum changes. Subject to the minimum energy rate specified in subclause (I) of this clause and the maximum energy rate specified in subclause (II) of this clause, the energy scheduled by the entitlement holder in each hour cannot change more than plus or minus six MW.

(v) Default schedule. If the entitlement holder does not submit a timely day-ahead schedule, as applicable, then the schedule for the applicable operating day shall be deemed to be, in every settlement interval of the applicable operating day, a total of eight MW for the daily capacity commitment. This deemed schedule may not be changed in any hour-ahead schedule.

(F) Contract price for gas-intermediate. The items to be included in the contract price between the entitlement holder and the affiliated PGC for the entitlement shall include:

(i) Capacity payment. The capacity payment from the entitlement holder to the affiliated PGC is the capacity price in dollars per MW specified in the letter confirmation for the entitlement times 25 MW.

(ii) Energy payment.

(I) The energy payment from the entitlement holder to the affiliated PGC is the sum, for each settlement interval in the entitlement month, of the minimum energy payment and the excess energy payment.

(-a-) The minimum energy payment is the product of eight MWh times the minimum fuel price.

(-b-) The excess energy payment is the product, for each settlement interval, of the excess fuel price defined in subclause (II)(-b-) of this clause times energy scheduled.

(II) Fuel price.

(-a-) The minimum fuel price is the product of a heat rate equal to 10.850 MMBtu per MWh times the daily gas price.

(-b-) The excess fuel price is the product of a heat rate equal to 10.850 MMBtu per MWh times the daily gas price.

(G) Timing of payment of contract price. The entitlement holder shall pay the affiliated PGC the capacity payment portion of the contract price not less than five days before the beginning of the entitlement month or 20 days after receiving an invoice for the capacity payment from the affiliated PGC, whichever is later. The entitlement holder shall pay the remainder of the contract price after receiving an invoice for that amount in accordance with the terms of the Agreement. If the affiliated PGC owes the entitlement holder any net amount under the contract price calculation, it will pay that amount to the entitlement holder in accordance with the terms of the Agreement.

(4) Gas-cyclic product.

(A) Description. The gas-cyclic entitlement shall be flexible day-ahead shaped power.

(B) Block size. Each gas-cyclic capacity entitlement shall be 25 MW in size.

(C) Fuel price.

(i) Except as specified otherwise in clause (ii) of this subparagraph, the fuel price owed to the affiliated PGC by the capacity entitlement holder for gas-cyclic capacity dispatched will be 12.100 MMBtu per MWh times the MWh of the gas-cyclic power dispatched under the entitlement times the daily gas price.

(ii) EGSI.

(I) For EGSI gas-cyclic capacity in the eastern congestion zone, the fuel cost owed to its affiliated PGC by the capacity entitlement holder for the gas-cyclic capacity dispatched will be 12.100 MMBtu per MWh times the MWh of gas-cyclic power dispatched under the entitlement times the Henry Hub daily gas price.

(II) For EGSI gas-cyclic capacity in the western congestion zone, the fuel cost owed to its affiliated PGC by the capacity entitlement holder for the gas-cyclic capacity dispatched will be 12.100 MMBtu per MWh times the MWh of gas-cyclic power dispatched under the entitlement times the average of the Henry Hub daily gas price and the Houston Ship Channel daily gas price.

(D) Starts per month and associated costs. The entitlement holder of gas-cyclic capacity shall be entitled to direct the selling affiliated PGC to make up to the amount of starts per month of each entitlement of gas-cyclic capacity allowed pursuant to subparagraph (E)(v) of this paragraph.

(E) Gas-cyclic scheduling.

(i) Schedule types. The entitlement holder shall submit a day-ahead schedule for the entitlement.

(ii) Timing of scheduling.

(I) The entitlement holder shall submit day-ahead schedules for the entitlement to seller no later than 8:00 a.m. The daily capacity commitment is determined for a gas-cyclic entitlement by the 8:00 a.m. schedule, unless the entitlement holder notifies seller, in the schedule, that it is exercising its option to set the

daily capacity commitment in the last schedule submitted before the gas-cyclic start deadline pursuant to subclause (IV) of this clause.

(II) The entitlement holder may submit to seller a revised day-ahead schedule for energy from the entitlement no later than noon, subject to the limit on maximum energy in clause (iv)(II) of this subparagraph.

(III) No hour-ahead schedules are permitted for energy from gas-cyclic entitlements.

(IV) The gas-cyclic start deadline for declaring the daily capacity commitment for each settlement interval in an operating hour is 15 hours before the start of the operating hour.

(iii) Schedule content. Each schedule shall specify, for each scheduling interval, the energy scheduled to be delivered to the entitlement holder from the entitlement.

(iv) Scheduling limits.

(I) Minimum energy. The entitlement holder may not schedule energy at any level between zero MW and five MW from the entitlement at any time during the month.

(II) Maximum energy. The entitlement holder may not schedule energy at any level greater than the daily capacity commitment in any scheduling interval.

(III) Maximum changes. Subject to the minimum energy rate specified in subclause (I) of this clause and the maximum energy rate specified in subclause (II) of this clause, the energy scheduled by the entitlement holder in each hour cannot change more than plus or minus six MW.

(v) Starts. The entitlement holder shall not direct more than 20 starts during the month of the entitlement, and the entitlement holder shall not direct more than one start per day. A start occurs every time a schedule increases the MW of energy from zero MW. Once the maximum number of starts have occurred during the entitlement, the energy scheduled by the entitlement holder may not be lower than a rate of five MW unless that level is lowered to zero MW, at which time the level may not be raised above zero MW for the remainder of the month.

(vi) Default schedule. If the entitlement holder does not submit a timely day-ahead schedule as applicable, then the schedule for the applicable operating day is deemed to be, in every settlement interval of the applicable operating day, zero MW for the daily capacity commitment and zero MW of energy. This deemed schedule may not be changed.

(F) Contract price for gas-cyclic. The items to be included in the contract price between the entitlement holder and the affiliated PGC for the entitlement shall include:

(i) Capacity payment. The capacity payment from the entitlement holder to the affiliated PGC is the capacity price in dollars per MW specified in the letter confirmation for the entitlement times 25 MW.

(ii) Energy payment.

(I) The energy payment for each settlement interval from the entitlement holder to the affiliated PGC is the product, of the fuel price defined in subclause (II) of this clause times energy scheduled.

(II) Fuel price.

(-a-) The fuel price, for the portion of the daily capacity commitment that is designated by the entitlement holder by 8:00 a.m. in the day-ahead schedule, is the product of a heat rate equal to 12.100 MMBtu per MWh times the daily gas price.

(-b-) The fuel price for the portion of the daily capacity commitment that is not released or committed at 8:00 a.m., but committed before the gas-cyclic start deadline, is the product of a heat rate equal to 12.100 MMBtu per MWh times (the sum of the daily gas price plus $0.25.)

(G) Timing of payment of contract price. The entitlement holder shall pay the affiliated PGC the capacity payment portion of the contract price not less than five days before the beginning of the entitlement month or 20 days after receiving an invoice for the capacity payment from the affiliated PGC, whichever is later. The entitlement holder shall pay the remainder of the contract price after receiving an invoice for that amount in accordance with the terms of the Agreement. If the affiliated PGC owes the entitlement holder any net amount under the contract price calculation, it will pay that amount to the entitlement holder in accordance with the terms of the Agreement.

(5) Gas-peaking product.

(A) Description. The gas-peaking entitlement shall be intra-day power.

(B) Block size. Each gas-peaking capacity entitlement shall be 25 MW in size.

(C) Fuel price.

(i) Except as specified in clause (ii) of this subparagraph, the fuel price owed to the affiliated PGC by the entitlement holder for gas-peaking capacity dispatched will be 14.100 MMBtu per MWh times the MWh of the gas-peaking power dispatched under the entitlement times the daily gas price.

(ii) EGSI.

(I) For EGSI gas-peaking capacity in the eastern congestion zone, the fuel cost owed to its affiliated PGC by the capacity entitlement holder for the gas-peaking capacity dispatched will be 14.100 MMBtu per MWh times the MWh of gas-peaking power dispatched under the entitlement times the Henry Hub daily gas price.

(II) For EGSI gas-peaking capacity in the western congestion zone, the fuel cost owed to its affiliated PGC by the capacity entitlement holder for the gas-peaking capacity dispatched will be 14.100 MMBtu per MWh times the MWh of gas-peaking power dispatched under the entitlement times the average of the Henry Hub daily gas price and the Houston Ship Channel daily gas price.

(D) Starts per month and associated costs. The entitlement holder of gas-peaking capacity shall be entitled to direct the selling affiliated PGC to make unlimited starts per month of each entitlement of gas-peaking capacity.

(E) Gas-peaking scheduling.

(i) Schedule types. The entitlement holder shall submit a day-ahead schedule for the entitlement and may submit hour-ahead schedules.

(ii) Timing of scheduling.

(I) The entitlement holder shall submit day-ahead schedules for the entitlement to the seller no later than 8:00 a.m. The daily capacity commitment is determined for a gas-peaking entitlement by the 8:00 a.m. schedule, unless the entitlement holder notifies the seller, in the schedule, that it is exercising its option to set the daily capacity commitment in the last schedule submitted before the gas-peaking start deadline defined in subclause (III) of this clause. The entitlement holder shall submit hour-ahead schedules for the

entitlement to the seller no later than one hour before the start of the operating hour.

(II) The entitlement holder may submit to the seller a revised day-ahead schedule for energy from the entitlement no later than noon.

(III) The gas-peaking start deadline for declaring the daily capacity commitment for each operating hour is two hours before the beginning of the operating hour.

(iii) Schedule content. Each schedule shall specify, for each scheduling interval, the energy scheduled to be delivered to the entitlement holder from the entitlement.

(iv) Scheduling limits.

(I) The rate at which energy is scheduled by the entitlement holder in each scheduling interval during one hour shall be either zero MW or 25 MW and cannot change during the hour.

(II) Subject to the requirement of subclause (I) of this clause, if the entitlement holder schedules any energy from the entitlement in one hour, the rate at which energy is scheduled shall continue uninterrupted at a level of 25 MW for not less than four hours.

(III) Subject to the requirements of subclause (I) and (II) of this clause, when the entitlement holder decreases a schedule for energy to zero MW from the entitlement in one hour, the energy scheduled shall continue uninterrupted at a level of zero MW for not less than two hours.

(v) Default Schedule. If the entitlement holder does not submit a timely day-ahead schedule then the schedule for the applicable operating day shall be deemed to be, in every settlement interval of the applicable operating day, zero MW for the daily capacity commitment and zero MW of energy. This deemed schedule may not be changed in any revised day-ahead schedule, or in any hour-ahead schedule.

(F) Contract price for gas-peaking. The items to be included in the contract price between the entitlement holder and the affiliated PGC for the entitlement shall include:

(i) Capacity payment. The capacity payment from the entitlement holder to the affiliated PGC is the capacity price in dollars per MW specified in the letter confirmation for the entitlement times 25 MW.

(ii) Energy payment.

(I) The energy payment for each settlement interval from the entitlement holder to the affiliated PGC is the product of the fuel price defined in subclause (II) of this clause times energy scheduled.

(II) Fuel price.

(-a-) The fuel price, for operating days for which the entitlement holder designated its daily capacity commitment by 8:00 a.m. in the day-ahead schedule, is the product of a heat rate equal to 14.100 MMBtu per MWh times the daily gas price.

(-b-) The fuel price, for operating days for which the entitlement holder exercised its option to designate its daily capacity commitment after 8:00 a.m. and before the gas-peaking start deadline, is the product of a heat rate equal to 14.100 MMBtu per MWh times (the sum of the daily gas price plus $.25).

(G) Timing of payment of contract price. The entitlement holder shall pay the affiliated PGC the capacity payment portion of the contract price not less than five days before the beginning of the entitlement month or 20 days after receiving an invoice for the capacity payment from the affiliated PGC, whichever is later. The entitlement holder shall pay the remainder of the contract price after receiving an invoice for that amount in accordance with the terms of the Agreement. If the affiliated PGC owes the entitlement holder any net amount under the contract price calculation, it will pay that amount to the entitlement holder in accordance with the terms of the Agreement.

(6) Scheduling discrepancies. If the entitlement holder submits a schedule to seller for an entitlement that violates any of the scheduling requirements for that capacity auction product type, the schedule shall be deemed a non-conforming schedule for a scheduled hour. The schedule for that non-conforming scheduled hour shall then be deemed to be the same as the schedule for the nearest preceding hour for which the schedule was not a non-conforming schedule. The seller shall promptly notify the entitlement holder of a non-conforming schedule.

(7) Ancillary services. Until such time that all ancillary services issues are addressed and resolved within the context of a Federal Energy Regulatory Commission (FERC) approved regional transmission organization, entitlements will include rights only to energy and capacity as described in this subsection and specifically exclude any ancillary services rights. Such exclusion is consistent with subsection (e)(1) of this section, which allows products other than those described in this subsection to be offered with good cause. In the interim, the affiliated PGC shall provide the required ancillary services to eligible customers at the current FERC-approved rates.

(h) Auction process.

(1) Timing issues.

(A) Frequency of auctions.

(i) Auction dates. Capacity auctions shall begin on March 10, July 10, September 10, and November 10 of each year. If the date for an auction start falls on a weekend or banking holiday, then that auction shall begin on the first business day after the weekend or banking holiday.

(ii) Simultaneous auctions. Auctions for a product will be held simultaneously by all affiliated PGCs of entitlements within the respective North American Electric Reliability Council (NERC) regions in Texas. For example, ERCOT and non-ERCOT auctions can be held at different times and dates.

(iii) Termination of the capacity auction process. The obligation of an affiliated PGC to auction entitlements shall continue until the earlier of 60 months after the date customer choice is introduced or the date the commission determines that 40% or more of the electric power consumed by residential and small commercial customers within the affiliated transmission and distribution utility's certificated service area before the onset of customer choice is provided by nonaffiliated retail electric providers. The determination of the 40% threshold shall be as prescribed by the commission's rule relating to the price to beat.

(B) Auction conclusion.

(i) Receipt of bids. In order for an affiliated PGC that is auctioning capacity to consider a bid, the bid must be received by that affiliated PGC by close of the round for which the bid is to be submitted.

(ii) Concluding each individual auction. The affiliated PGC shall provide notice of the winning bid(s) to auction participants and the commission by the close of business on the first day after the auction closes that is not a weekend or banking holiday.

(iii) Confidentiality and posting of bids. The affiliated PGC shall designate non-marketing personnel to evaluate the bids, and persons reviewing the bids shall not disclose the bids to any person engaged in marketing activities for the affiliated PGC or use any competitively sensitive information received in the bidding process. Upon announcement of the winning bids, the affiliated PGC shall provide the commission and all auction participants information on the quantity of each product requested by bidders during each round of an auction, but shall not divulge the identity of any particular bidders. Upon specific request by the commission, and under standard protective order procedures, the utility shall provide the identity of the bidders to the commission.

(iv) The affiliated PGC shall be deemed to have met the 15% requirement if it offered products in a product category (for example, gas-intermediate) and successfully sold, at least, all of the entitlements offered in one particular month, in that product category. If there is no month in which all of the products in a product category are sold, the affiliated PGC shall comply with the provisions of paragraph (7)(C) of this subsection.

(2) Auction administration.

(A) Each auction shall be administered by the affiliated PGC selling the entitlement. An affiliated PGC or group of affiliated PGCs may retain the services of a qualified third-party to perform the auction administration functions.

(B) Notice of capacity available for auction.

(i) Method of notice. At least 60 days before each auction start date, each affiliated PGC offering capacity entitlements at auction shall file with the commission notice of the pending auction. Within 20 days of the filing of the notice, interested parties may provide comments on the affiliated PGC's proposed notice. If no comments are received, the affiliated PGC's proposed notice shall be deemed appropriate. If any party objects to the affiliated PGC's proposed notice, then the commission shall administratively approve, reject, or approve the notice with modifications.

(ii) Contents of notice.

(I) The auction notice shall include the auction start date, the date and time by which bids must be received for the first round, and the types, quantity (number of blocks), congestion zone, and term of each entitlement available in that auction. The notice shall also include the following range of bid increments for each product type to be used to adjust the price of entitlements between rounds of the auction:

(-a-) Baseload - $.05 to $.75;
(-b-) Gas-intermediate - $.02 to $.30;
(-c-) Gas-cyclic - $.02 to $.30;
(-d-) Gas-peaking - $.02 to $.30.

(II) The affiliated PGC shall also specify which power generation units will be used to meet the entitlement for each type of entitlement to be auctioned. If baseload entitlements are being auctioned, the utility shall also specify the fuel cost prescribed in subsections (f)(3)(B)(ii) and (g)(2)(F)(ii) of this section at the time of the auction. If an entitlement to be auctioned is subject to the forced outage provision in subsection (e)(2)(B) of this section, then the notice must include the applicable three-year rolling average of the forced outage rate.

(iii) The affiliated PGCs shall publish their respective notices and application forms on their web sites no later than 45 calendar days before the start of each auction. Each entity that intends to bid in an affiliated PGC's auction shall complete the forms, which include the first page of the cover sheet to the Agreement, and submit them to the affiliated PGC at least 20 business days before the auction starts, to allow enough time for evaluation and approval of credit. Potential bidders may submit the required documents after that time, but at the risk of not having credit and document approval in time for them to participate in the auction.

(iv) Credit approval for entities bidding on capacity auction products in ERCOT or in non-ERCOT areas of Texas will be performed pursuant to subsection (e)(7) of this section.

(v) The affiliated PGC shall notify an approved bidder of its available credit and send the approved bidder a completed capacity auction-specific version of the applicable Agreement, executed by the affiliated PGC, within ten business days after the bidder has submitted the required information. The approved bidder should attempt to execute and return the executed Agreement to the affiliated PGC no later than five business days before the auction starts. The executed Agreement shall be received by the affiliated PGC no later than two business days before the auction starts. The affiliated PGC shall provide a password or passwords to the approved bidder to allow access to the auction web site and to allow it to bid no later than one business day before the auction starts. An approved bidder may not request or receive additional credit after the auction starts.

(vi) Specific information on how to place bids and navigate the auction sites will be provided by the affiliated PGCs to their qualified bidders prior to the beginning of the capacity auction.

(3) Term of auctioned capacity.

(A) Initial auction. For the initial auction in September 2001, each entitlement was one month in duration, with:

(i) Approximately 20% of the entitlements auctioned as two one-year strips with the strips auctioned jointly (the 12 months of 2002 and 2003),

(ii) Approximately 30% of the entitlements as one-year strips (the 12 months of 2002), and

(iii) Approximately 20% of the entitlements as discrete months for each of the 12 months of 2002 (January through December of 2002)

(iv) Approximately 30% of the entitlements as discrete months for the first four months of 2002 (January through April of 2002).

(v) Reductions in the amounts of entitlements available during the months of March, April, May, October, and November of each calendar year shall be accounted for in the entitlements offered as discrete months.

(B) Schedule of subsequent auctions.

(i) The auction in March of a year will auction approximately 30% of the entitlements as the discrete months of May through August of that year.

(ii) The auction in July of a year will auction approximately 30% of the entitlements as the discrete months of September through December of that year.

(iii) The auction in September of a year will auction:

(I) Approximately 30% of the entitlements as the one-year strips for the next year; and

(II) Approximately 20% of the entitlements as discrete months for each of the 12 calendar months of the next year.

(iv) The auction in November of a year will auction approximately 30% of the entitlements as the discrete months of January through April of the next year.

(v) Reductions in the amounts of entitlements available during the months of March, April, May, October, and November of each calendar year shall be accounted for in the entitlements offered as discrete months.

(vi) In June of 2003, an evaluation will be made by the commission as to the need for another set of two-year strips (the 24 months of 2004 through 2005). If such term is deemed to be necessary, the next set of two-year strips will be auctioned in September of 2003. If such term is not deemed to be necessary, then subsequent auctions will auction 50% of entitlements over one-year strips and 50% of the entitlements as discrete months.

(C) Modification of term. If the auction is for a one-year or two-year strip term and the affiliated retail electric provider (REP) expects to reach the 40% load loss threshold in paragraph (1)(A)(iii) of this subsection, the affiliated PGC may request a shorter term strip by providing evidence of the loss of customer load. Similarly, prior to an auction for the next four available months, an affiliated PGC may request to not auction months in which it projects reaching the 40% threshold. Such filings shall be made 90 days before the auction start date. An affiliated PGC that will satisfy its auction requirements through divestiture, as described in subsection (d) of this section may petition the commission to set an appropriate term for entitlements. The affiliated PGC may not adjust the amount or length of an entitlement to be auctioned except as authorized by the commission.

(4) Quantity to be auctioned.

(A) Block size and number of blocks. The block size of the auctioned capacity entitlement is 25 MW. The affiliated PGC shall divide the amount determined for each product referenced in subsection (e)(1) of this section by 25 to determine the number of blocks of each type to be auctioned.

(B) Divisibility. If the amount to be auctioned for an affiliated PGC for a particular product is not evenly divisible by 25, any remainder shall be added to the product most highly valued in the immediately preceding auction for products of the same duration and shall increase by one the number of entitlements of that product.

(C) Total amount. The sum of the blocks of capacity auctioned shall total no less than 15% of the affiliated PGC's Texas jurisdictional installed generation capacity.

(5) Bidders. For each auction, potential bidders shall prequalify by demonstrating compliance with the credit requirements in subsection (e)(7) of this section in advance of submission of a bid.

(6) Bidding procedures. For purposes of this section, the term "set of entitlements" shall refer to all of a seller's products of the same type and period. For example, a quantity of baseload products sold as a one-year strip for 2002 would be a set of baseload-annual 2002 entitlements, while a quantity of baseload products sold as the discrete month of July 2002 would be a set of baseload-July 2002 entitlements.

(A) Method of auction for affiliated PGCs within ERCOT. Each auction shall be a simultaneous, multiple round, auction that includes procedures that allow switching by bidders between affiliated PGCs and product types.

(i) Auction duration. Once a product auction commences it will continue through each business day until that auction concludes.

(ii) Round duration. Each auction's first round will begin promptly at 8:00 a.m. and each round will last for 30 minutes with 30 minutes between rounds. For example, the first round of bidding will start at 8:00 a.m. and end at 8:30 a.m., the second round will start at 9:00 a.m. and end at 9:30 a.m., etc. No round may start later than 4:00 p.m. All times are in central prevailing time.

(iii) Credit calculation. An entitlement bidder's credit limit shall be adjusted during the auction based on the value of the entitlements bid upon, and will be determined by using an assumed fuel price stated by the entitlement seller, and the capacity price for the lesser of three months or the duration of the entitlement plus the amount that would be paid to exercise the entitlement for the lesser of three months or the duration of the entitlement at the assumed dispatch for each product as follows:
Figure: 16 TAC §25.381(h)(6)(A)(iii)

(B) Mechanism for auction for affiliated PGCs within ERCOT. Each affiliated PGC shall conduct the auction over the Internet on a secure web page and shall assign a password and bidder's number to each entity that has satisfied the credit requirements in this section.

(C) Method of auction for affiliated PGCs in non-ERCOT areas. Each auction shall be a simultaneous, multiple round, open bid auction.

(i) First round. For the first round of the auction, the affiliated PGC will post the opening bid price determined in accordance with paragraph (7) of this subsection for each set of entitlements available for purchase at the auction. Each bidder will specify the number of entitlements it wishes to purchase of each set of entitlements at the opening bid price(s). If the total demand for a set of entitlements is less than the available quantity of the set of entitlements, the price for each of the entitlements in the set will be the opening bid price and each bidder in the round will receive all of the entitlements in the set they demanded. Any remaining entitlements of the set will be held for future auction as noticed by the affiliated PGC in accordance with its notice given pursuant to paragraph (7) of this subsection.

(ii) Subsequent rounds. If the total demand for a set of entitlements in any round is more than or equal to the available quantity, the affiliated PGC will adjust the price upward within the range for each specific product type as noticed according to paragraph (2)(B)(ii)(I) of this subsection. Bidders shall then submit bids for the quantities they wish to purchase of each set of entitlements at the new price. Subsequent rounds shall continue until demand is less than supply for each set of entitlements. The auction then closes and the market clearing price for each set of entitlements is set at the last price for which demand equaled or exceeded supply. Bidders shall then be awarded the entitlements they demanded in the final round, plus a pro-rata share of any entitlements they demanded in the next to last round as described in clause (iii) of this paragraph.

(iii) Pro-rata entitlement allocation. The pro-rata allocation of entitlements will be implemented by determining a bid differential between the next-to-last round bid and the number of awarded entitlements based on the last round and awarding the remaining entitlement to the bidder with the largest differential. The awarded entitlement will then be subtracted from that bidder's differential and the process will iterate until all entitlements have been awarded. In the event that the differential between two or more bidders is the same, the tie will be broken based on the timestamp of each bidder's last bid submitted in the next-to-last round. For example, 14 baseload one-year strip entitlements are available and bidders A, B, C, and D are bidding. In the last round, demand was only 11 entitlements and bidder D did not bid.
Figure 1: 16 TAC §25.381(h)(6)(C)(iii)

Figure 2: 16 TAC §25.381(h)(6)(C)(iii)
Figure 3: 16 TAC §25.381(h)(6)(C)(iii)
Figure 4: 16 TAC §25.381(h)(6)(C)(iii)

(iv) Auction duration. Once a product auction commences it will continue through each business day until that auction concludes.

(v) Round duration. Each auction's first round will begin promptly at 8:00 a.m. and each round will last for 30 minutes with 30 minutes between rounds. For example, the first round of bidding will start at 8:00 a.m. and end at 8:30 a.m., the second round will start at 9:00 a.m. and end at 9:30 a.m., etc. No round may start later than 4:00 p.m. All times are in central prevailing time.

(vi) Credit calculation. An entitlement holder's credit limit shall be adjusted during the auction based on the value of the entitlements awarded to the holder, which will be determined by using an assumed fuel price stated by the entitlement seller, and the capacity price for the lesser of three months or the duration of the entitlement plus the amount that would be paid to exercise the entitlement for the lesser of three months or the duration of the entitlement at the assumed dispatch for each product as follows:
Figure: 16 TAC §25.381(h)(6)(C)(vi)

(D) Activity rules for affiliated PGCs in non-ERCOT areas.

(i) A bidder must bid in the first round for a particular entitlement to participate in subsequent rounds.

(ii) A bidder may not bid a greater quantity than it bid in a previous round for a particular entitlement.

(E) Mechanism for auction for affiliated PGCs in non-ERCOT areas. Each affiliated PGC shall conduct the auction over the Internet on a secure web page and shall assign a password and bidder's number to each entity that has satisfied the credit requirements in this section.

(7) Establishment of opening bid price.

(A) If an affiliated PGC intends to change the minimum opening bid prices that would otherwise be applicable under subparagraph (B) of this paragraph, it shall file with the commission, not less than 90 days before the auction start date on which the change is proposed to be applicable, a methodology for determining an opening bid price for each type of entitlement, if needed, based on the affiliated PGC's expected variable cost of operation, but excluding any return on equity. The opening price may not include any cost included in the fuel price to be paid by entitlement holders, nor any cost being recovered by its affiliated transmission and distribution utility through non-bypassable delivery charges, but may recover variable costs not included in the fuel prices, such as fuel service costs and start up fees. Parties shall have 30 days after filing to challenge the methodology. If no challenges are received, the affiliated PGC's proposed methodology shall be deemed appropriate. If any party objects to the affiliated PGC's proposed methodology, then the commission shall determine the appropriate methodology.

(B) Minimum opening bids for entitlements shall be the same as the minimum opening bids used in the most recent auction that included those entitlements, except that sellers with plants that have been affected by congestion zone changes since the most recent auction may use minimum opening bids that are different than the minimum opening bids in the most recent auction, provided that the seller maintains the same weighted-average, by MW, of the most recent auction's minimum bids, for all of its plants of the same product type in all congestion zones, to compute the new minimum opening bids for each product type. Nothing in this subparagraph shall prevent the commission from ordering a different methodology for a seller, if the seller proves that good cause exists for the change.

(C) In the notice provided pursuant to paragraph (2)(B)(i) of this subsection, the affiliated PGC may make available an opening bid price calculated pursuant to the commission-approved methodology for each type of entitlement to be offered for sale at auction. The affiliated PGC shall not be obligated to accept any bid for a product less than the opening bid price, but shall notify the commission that the opening bid price was not met. The affiliated PGC shall be deemed to have met the 15% requirement if it offered products in a product category (for example, gas-intermediate) and successfully sold, at least, all of the entitlements offered in one particular month, in that product category. If there is an auction where there is no month in which all of the entitlements of a particular product are sold, then the affiliated PGC shall, in its notice pursuant to paragraph (2)(B)(i) of this subsection, make a proposal to the commission in order to comply with the 15% requirement. The affiliated PGC's proposal may include revisions to the product category, product price, or offer alternative products for auction.

(8) Results of the auction. The results of the auction shall be simultaneously announced to all bidders by posting on the affiliated PGC's auction web site with posting of the market clearing price for each set of entitlements.

(i) Resale of entitlement.

(1) Compliance with provisions. An entitlement may be assigned, sold or transferred by the entitlement holder only by following the provisions of this section. Any purported assignment, sale, or transfer of an entitlement that does not follow the provisions of this section is void and ineffective against the affiliated PGC.

(2) Eligible entities. An entitlement holder may assign, sell, or transfer an entitlement to any person or entity other than an affiliated REP, but the entitlement holder may dispatch the output of the entitlement to an affiliated REP.

(3) Obligations. An entitlement that is assigned, sold, or transferred under this section remains subject to the provisions of the Agreement under which it originated, and the assignee of that entitlement succeeds to all of the rights and obligations of the assignor with respect to that entitlement.

(4) Liability. Neither the assignor nor any previous entitlement holder that has remained liable for payments due to the affiliated PGC in connection with the entitlement as a result of a previous assignment, sale, or transfer is released from liability to the affiliated PGC for payments due in connection with the entitlement unless:

(A) At least 14 days before the effective date of the assignment, sale, or transfer, assignee has provided security to the affiliated PGC that is equal to or greater than the security originally given to the affiliated PGC for the entitlement; and

(B) At least ten days before the effective date of the assignment, sale, or transfer, the affiliated PGC has notified both assignor and assignee in writing that the security has been approved and accepted by the affiliated PGC.

(5) Requests to approve security. The affiliated PGC shall respond to written requests to approve security to be offered by a prospective assignee within 14 days after receipt of that request. Approval shall not be unreasonably withheld.

(6) Effective date. No assignment, transfer, or sale of the entitlement by a party is binding on the non-assigning party until the non-assigning party receives written notice of the assignment, sale, or

transfer and a copy of the executed assignment, sale, or transfer document, and the assignment, sale, or transfer is not effective unless such notice is received at least three days before the beginning of the entitlement month.

(j) True-up process.

(1) Process. For 2002 and 2003, the affiliated PGC shall reconcile, and either credit or bill to the transmission and distribution utility, any difference between the price of power obtained through the capacity auctions under this section and the power cost projections that were employed for the same time period in the ECOM model to estimate stranded costs for the affiliated PGC in the PURA §39.201 proceeding.

(2) PGCs without stranded costs. An affiliated PGC that does not have stranded costs described by PURA §39.254 is not required to comply with paragraph (1) of this subsection.

(3) Any order by the commission that finally resolves an affiliated PGC's stranded costs, prior to true-up, supersedes this subsection.

(k) True-up process for electric utilities with divestiture. If an affiliated PGC meets its capacity auction requirements through a divestiture as allowed by subsection (d) of this section, the proceeds of the divestiture shall be used for purposes of the true-up calculation.

(l) Modification of auction procedures or products. Upon a finding by the commission that the auction procedures or products require modification to better value the products or to better suit the needs of the competitive market, the commission may, by order, modify the procedures or products detailed in this section.

(m) Contract terms.

(1) Standard agreement. Parties shall utilize the Agreement in the form prepared by the Edison Electric Institute (Version 2.1). The Cover Sheet to the Agreement shall provide for credit terms that are based upon objective credit standards determined by the commission. There may be different versions of the Agreement applicable to sales of capacity auction products in different regions in Texas. For example, ERCOT and the non-ERCOT areas may have different versions of the Agreement.

(2) Applicability. The terms and conditions set forth in any Agreement apply only to the entitlements obtained in the capacity auctions under this section.

(3) Electronic scheduling. The Agreement shall require that, if the affiliated PGC provides an electronic scheduling interface for the dispatch of entitlements, then the entitlement holder shall schedule the dispatch of its entitlements using that electronic interface.

(4) Scheduling discrepancies. If an entitlement holder submits a non-conforming schedule to the affiliated PGC for an entitlement that violates any of the scheduling requirements for that capacity auction product type for a scheduled hour, then the schedule for that hour is deemed to be the same as the schedule for the hour most closely preceding that scheduled hour that was not a non-conforming schedule. The affiliated PGC shall promptly notify the entitlement holder of a non-conforming schedule. However, the requirements of this paragraph are subject to the default scheduling requirements for baseload and gas-intermediate products delineated in subsections (f)(3)(A)(iv)(V) and (f)(4)(A)(v) of this section for ERCOT areas, and subsections (g)(2)(E)(v) and (g)(3)(E)(v) of this section for non-ERCOT areas.

(5) Alternative dispute resolution. Alternative dispute resolution shall be a condition precedent to any right of any legal action regarding a dispute arising under, or in connection with, the standard agreement adopted by the commission. The parties may mutually agree to dispute resolution procedures. If the parties are unable to agree upon such procedures within five days after such dispute arises, the parties shall use the alternative dispute resolution procedures contained in the ERCOT protocols.

(6) Seller's failure to fulfill obligation. If an entitlement holder is assessed for imbalanced schedules, failure to procure ancillary services, or any other charges from ERCOT due to the failure of the affiliated PGC to fulfill the auctioned obligation, the affiliated PGC shall be responsible for these costs incurred by the entitlement holder.

(n) This section, as adopted, becomes effective on August 1, 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 June 19, 2002.

TRD-200203840
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: January 18, 2002
For further information, please call: (512) 936-7308

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS
SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §26.125

The Public Utility Commission of Texas (commission) adopts an amendment to §26.125, relating to Automatic Dial Announcing Devices (ADADs) with no changes to the proposed text as published in the March 22, 2002*Texas Register* (27 TexReg 2162). The amendment clarifies the permit application and renewal process for ADAD permit holders and annual required information and reduces the fee for applications and renewals. The commission also revises the *Texas Permit Application* form and *Texas Permit Renewal* form and adopts a *Notification of Complaint* form. The amendment and forms were adopted under Project Number 23528.

The commission received comments on the proposed amendment and forms from the Office of Public Utility Council (OPC). OPC sought clarification of the reduction in fees and wondered if a cost analysis had been performed.

The commission reviewed administrative costs for the application and renewal process and reduced fees to more accurately reflect those costs. Additionally, the commission seeks to establish a more comprehensive database and wishes to impose no financial impediment to the application and renewal process.

OPC expressed concern that live operators were exempt from subsection (b)(3)(B) regarding automated dialing or hold announcements. OPC stated the Federal Trade Commission has recognized that some telemarketers play a recorded message

rather than a brief hold announcement message when a live operator is not available and that the automated message delivers the same message delivered by a live operator.

The commission clarifies that live operators are not automatically exempt, if used as described above.

To better understand and monitor this segment of the telecommunications market and protect the public, the commission wishes to utilize a form for the renewal process with questions identical to those on the application form.

This amendment and forms are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically PURA §55.129, which provides that an ADAD operator must obtain a permit from the commission and renew that permit annually.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002; Chapter 15, Subchapter B; Chapter 17, Subchapter B; and Chapter 55, Subchapter F.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 20, 2002.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7216

16 TAC §26.130

The Public Utility Commission of Texas (commission) adopts an amendment to §26.130 (relating to Selection of Telecommunications Utilities) with changes to the proposed text as published in the February 15, 2002 *Texas Register* (27 TexReg 1062). This rulemaking is required by the commission's Order in Project Number 23375, *Petition of Texas Statewide Telephone Cooperative, Inc. to Amend Substantive Rule §26.130(f) Regarding Inconsistencies Between Federal and State Rules*, issued on February 8, 2001. The amendment is necessary to implement additional requirements adopted by the Federal Communications Commission (FCC) after the current §26.130 was adopted, to enhance consistency with FCC requirements, and to make administrative corrections. This amendment was adopted under Project Number 24626.

The amendment:

(1) updates references to FCC regulations;

(2) adds electronically signed letter of agency (LOA) as a verification method;

(3) requires that customers be provided the option of using another authorization method in lieu of an electronically signed authorization;

(4) requires that a telecommunications utility submit a change order within no more than 60 days after obtaining verification from the customer;

(5) adds FCC provisions to the minimum requirements for third party verification;

(6) adds FCC requirements related to the notification of an alleged unauthorized change;

(7) adds FCC requirements related to customer notice involving transferring customers; and

(8) adds a requirement to provide FCC slamming reports containing only Texas-specific data.

The amendment also includes requirements based on additional provisions adopted by the FCC (CC Docket No. 94-129, Third Report and Order on Second Reconsideration, FCC 00-255) (Third Report and Order) after adoption of the current §26.130. The reporting requirement in §26.130(m) is based on an FCC reporting requirement and establishes the same reporting format and period used by the FCC.

The commission received comments on the proposed amendment from MCI Telecommunications, Inc. (MCI), AT&T Communications of Texas, L.P. (AT&T), Texas Statewide Telephone Cooperative, Inc. (TSTCI), Southwestern Bell Telephone, L.P., doing business as Southwestern Bell Telephone Company (SWBT), Verizon Southwest (Verizon), and the Office of the Attorney General of Texas (OAG). The commission also received reply comments from MCI, AT&T, SWBT, Verizon, OAG, and Consumers Union.

A public hearing on the proposed amendment was held at the commission offices on April 17, 2002, at 9:30 a.m. Representatives from MCI, AT&T, SWBT, OAG, TSTCI, Verizon, Sprint Communications Company L.P., and John Staurulakis Incorporated participated in the public hearing.

General Comments

TSTCI expressed its appreciation of the commission's efforts to amend its rules to mirror the FCC's rules and supported the proposed amendment as published. TSTCI indicated that the new rule is a very positive development for Texas telecommunications consumers and providers. OAG commended the commission for making its slamming rule even more generally protective of customers and provided specific support for several proposed changes to the current rule related to naming the telecommunications utilities affected, removing all unpaid charges, submitting change orders within 60 days after verification, and requiring that the LOA be located on a separate screen or webpage. Consumers Union supported the amended rule as published and the comments of the OAG. Consumers Union further commented that slamming continues to be a problem in our state and that the commission should adopt and enforce a rule that is in the best interest of Texas consumers, rather than limit itself to the terms of the federal rule.

AT&T commended the commission for some laudable attempts to harmonize the Texas rules with the FCC's rules and expressed appreciation for including a number of its recommendations in the commission's proposed amendment. However, AT&T pointed out that certain inconsistencies with the FCC's rules still exist and proposed several changes to the proposed amendment designed to produce rules that would be consistent with the FCC's rules - reasonable, efficient, and strike the right balance between benefits and burdens. Similarly, SWBT

stated that the commission incorporated several suggestions in the proposed amendment bringing the rule more in line with federal rules, but indicated that further changes were required to provide more consistency. MCI stated its appreciation for the consideration given to its previous suggested revisions but reiterated several concerns with the proposed amendment.

The commission appreciates the inputs to this rulemaking process from all of the parties at the workshop in November 2001, after publication of the proposed amendment, and at the public hearing in April 2002. The commission included several recommendations in developing the proposed amendment and adopts additional recommendations as indicated later in this preamble. The adopted amendment is based on the following considerations: ensuring customer protection while fostering competition in providing telecommunications services; minimizing administrative requirements and cost; ensuring compliance with all requirements of the Public Utility Regulatory Act (PURA); and enhancing consistency with current applicable FCC rules.

As the commission indicated in Project Number 23375, the consistency provision in PURA §55.308 does not require that the commission rules duplicate those of the FCC. The FCC allows flexibility to the states with regard to remedies and has stated that they will not interfere with the state's ability to adopt more stringent regulations, that they must work hand-in-hand with the states to combat slamming, and that states have valuable insight into slamming problems in their respective locales.

Subsection (b), Definitions

AT&T, SWBT, MCI, and Verizon recommended revising the definition of "customer" in proposed subsection (b)(2) to more closely mirror the FCC's definition of "subscriber" to recognize that the customer may authorize someone to act on his/her behalf. The parties indicated that the current Texas rule limits the definition of a person who may authorize a change in residential carrier selection to either the account holder or the account holder's spouse, that the proposed expansion of the definition would promote customer choice and competition without increasing slamming, and that their proposal is consistent with the FCC definition and rationale.

AT&T stated that it appears that the commission's definition for "customer" in this rule was taken from PURA §64.002(4), which explicitly relates to Chapter 64, Customer Protection, only, and most specifically to the anti-cramming measures that the Legislature placed in that chapter. AT&T disagreed that the definition in Chapter 64 is also appropriate in the slamming context. AT&T pointed out that Chapter 64 was added during the 1999 legislative session, and Chapter 55, Subchapter K (regarding Selection of Telecommunications Utilities) was also amended during that session, yet the Legislature did not adopt a definition of "customer" for slamming.

The commission does not agree with expanding the definition of "customer." The commission considered this issue during the previous amendment to this rule in Project Number 21419, *Amendments to §26.130 Regarding Customer's Right to Choice (Slamming) (PURA Section 17.004(a)(5) - SB 86)*. The definition in subsection (b)(2) already includes a spouse, is consistent with the definition used by the commission since it was granted jurisdiction over slamming in 1997, and is consistent with the definition used for cramming in §26.32, Protection Against Unauthorized Billing Charges ("Cramming"). The commission believes that expanding the current definition would result in reduced carrier safeguards and lead to an increase in slamming. Expansion of the definition would not promote greater customer choice because it would result in additional switches in a customer's service caused by unauthorized persons.

MCI recommended adding language used in the FCC definition to the definition of "executing telecommunications utility" in proposed subsection (b)(3).

The commission agrees with MCI and adds the language to proposed subsection (b)(3).

Subsection (c), Changes in preferred telecommunications utility

AT&T opposed the requirement in proposed subsection (c)(1) that makes it mandatory for a submitting telecommunications utility to submit a change order within 60 days after obtaining verification from the customer. AT&T commented that a utility may not submit an order because service cannot otherwise be provided (*e.g.*, no facilities in the area at the time, customer fails to submit the required deposit, etc.). AT&T stated that because it appears that the commission's proposed requirement is based on a similar requirement in the FCC's rules, at a minimum the Texas requirement should also be limited to written or electronic verifications, as the FCC's rule is so limited. AT&T further indicated that there is no need for such a restriction on authorizations verified by third party verification (TPV) or other forms of verification and that this requirement should not be applied to business customers. AT&T proposed that, at a minimum, the proposed rule should be modified to reflect that an initial, or blanket, authorization may be extended by the customer to cover a period beyond the 60 days contemplated by the rule.

MCI agreed with AT&T's comments and recommended that the requirement to submit a change order within 60 days be limited to written or electronic verifications and to residential customers.

OAG supported proposed subsection (c)(1). In its reply comments, SWBT agreed with the commission and OAG that carriers should submit change orders within 60 days. SWBT stated that having a definite and limited time period will protect consumers by preventing problems with "stale" orders that may no longer be active and urged the commission to keep the 60-day period intact.

The commission agrees with OAG and SWBT and makes no changes to proposed subsection (c)(1). The commission recognizes that the FCC's 60-day limitation is included only in the section for letters of agency. However, the underlying purpose of this requirement, timely submission of change orders, applies regardless of the verification method used by a carrier to confirm a switch in service provider.

AT&T supported the commission's proposed subsection (c)(1)(C)(ii) to allow recorded verifications to be provided via a wave sound file. AT&T also recommended that the rule permit the use of CD ROMs or other similar technically compatible devices. AT&T stated that if the commission has the technical capability to access the data, then the rule should permit flexibility in the carrier's use of recording medium. Verizon indicated that it did not oppose AT&T's proposal as long as the recording medium does not burden the carrier receiving the TPV. Carriers receiving the TPV should not be forced to purchase additional equipment as a result of the recording medium used in the TPV process.

The commission finds merit in AT&T's recommendation to allow other devices to record third party verifications. The commission shares Verizon's concern about requiring carriers to purchase additional equipment. The commission does not wish to require specific devices or hinder the use of advanced technological recording devices used to record TPVs. However, TPV recordings submitted to the commission as part of a complaint investigation must be in a recorded medium that is compatible with the commission's equipment. Accordingly, the commission revises proposed subsection (c)(1)(C)(ii) to allow other recording devices that are compatible with the commission's equipment.

AT&T opposed the requirement in proposed subsection (c)(1)(C)(iv) and in proposed subsection (d)(3)(B), to elicit the names of the telecommunications utilities affected by the change. This was not previously a TPV requirement and AT&T saw no reason to add it now. AT&T stated it believes that the process of changing carriers should be easy and convenient for customers. Customers should not be subjected to a rejection of their attempt to switch carriers merely because they do not recall the name of the carrier at the time the TPV call is made. Further, the requirement to elicit this information does nothing to improve the verification process since neither the submitting carrier nor the TPV agent has access to information that would indicate whether or not the customer has correctly identified the "current telecommunications utility." It should be sufficient that the customer indicates an affirmative decision to choose the new carrier and not have to also indicate a decision to reject the previous carrier.

MCI stated that a customer or customer's spouse may not be aware of the name of the current provider and recommended qualifying proposed subsection (c)(1)(C)(iv) to require the naming of the telecommunications utilities affected "if available." Verizon did not agree with MCI's recommended qualification and instead proposed the requirement be eliminated. Verizon also stated that the FCC does not require that a customer provide the name of the current provider. OAG supported the requirement in proposed subsection (c)(1)(C)(iv) that the third party verifier elicit the names of the telecommunications utilities affected.

The commission adopts proposed subsection (c)(1)(C)(iv) without changes. The requirement to identify the customer's current carrier provides an additional protection against unauthorized switches in service. The commission points out that this is also an FCC third party verification requirement in 47 Code of Federal Regulations (C.F.R.) §64.1120(c)(3)(iii).

AT&T opposed the provision in proposed subsection (c)(1)(C)(vii) requiring the sales representative to drop off the TPV call once the three-way connection has been established. AT&T commented that the FCC adopted a similar rule in its Third Report and Order. However, petitions for reconsideration have been filed with the FCC noting the lack of record support for the rule, the FCC's failure to consider comments opposed to the rule, and the significant free- speech issues raised by the rule. AT&T stated that the sales representative often can play an important part in the call by answering any questions about the service that might arise during the verification process. In AT&T's view, rather than outlawing all speech by the sales representative, a more reasoned and reasonable approach would be to limit the sales representative's participation to answering questions in a neutral manner or other narrowly tailored limits.

The commission disagrees with AT&T's suggestion and adopts proposed subsection (c)(1)(C)(vii) without changes. The requirement is necessary to ensure the third party verification process is neutral and independent in obtaining clear and conspicuous consent from the customer. This is also, as AT&T recognized, a current FCC requirement in 47 C.F.R. §64.1120(c)(3)(ii).

Subsection (d), Letters of Agency (LOA)

For the same reasons described in the comments on proposed subsection (c)(1)(C)(iv) above, AT&T and Verizon opposed the requirement in proposed subsection (d)(3)(A)(ii) to verify the customer's current utility. Similarly, AT&T suggested modifying the "sample" LOA language under proposed subsection (d)(3)(B) to make it clear that the customer is authorizing a change from the current utility, without the requirement that the current utility be named.

The commission adopts proposed subsection (d)(3)(A)(ii) and (d)(3)(B) without changes. As indicated previously, the requirement to identify the customer's current carrier provides an additional protection against unauthorized switches in service. The FCC does not include this requirement for LOA verification, but it does for third party verification. The commission can find no reason why this requirement should apply to one verification method but not the other. The commission believes that the customer protection benefit of this provision should apply to both verification methods.

AT&T opposed the requirement in proposed subsection (d)(3)(A)(v) that the LOA must contain a separate statement that the customer may consult with the carrier as to whether a fee applies to the change. AT&T stated that the rule already requires that the customer be informed that a charge may apply and that even the most unsophisticated customer should be expected to know that they may inquire of the utility whether a change charge will be imposed. AT&T further stated that its LOA is already straining with the amount of text that must be provided to a customer, and this particular requirement seems especially unnecessary.

The commission adopts proposed subsection (d)(3)(A)(v) without changes. The commission views the required statement as informative to the customer and does not consider it burdensome to carriers. Furthermore, this statement is an FCC LOA verification requirement in 47 C.F.R. §64.1130(e)(5).

Subsection (e), Notification of alleged unauthorized change

AT&T, SWBT, and MCI opposed the requirement in proposed subsection (e)(3) that the alleged unauthorized telecommunications utility remove all unpaid charges pending a determination of whether an unauthorized change occurred. The parties recommended limiting the removal of charges to the first 30 days after the alleged slam and pointed out that this limitation is consistent with the federal rules on slamming in 47 C.F.R. §64.1160(b). They further commented that this limitation encourages consumers to become more vigilant in detecting slamming by giving them incentive to review their telephone bills carefully. AT&T cited backbilling and uncollectible problems as a result of the proposed rule. SWBT commented that the FCC reconsidered the time period for absolution of charges in 2000 and declined to extend the absolution period beyond 30 days.

In its comments, OAG supported the requirement in proposed subsection (e)(3) to remove all unpaid charges. In its reply comments, OAG reaffirmed its support for the published rule and indicated that limitations on removal of charges would not be ultimately protective of customers and that should the allegation prove incorrect, the carrier would, of course, be entitled to payment of all legally incurred obligations.

The commission adopts proposed subsection (e)(3) without changes. The rule is consistent with the policy of removing any profit from slamming by preventing an alleged unauthorized carrier from requiring any payment from a customer after an alleged slam is reported. If it is subsequently determined that there was no slam, the alleged unauthorized carrier is entitled to full payment of all charges. If there was a slam, the customer is absolved of charges for the first 30 days, the authorized carrier is entitled to all charges after the first 30 days based on its rates, and the unauthorized carrier must make refunds to the customer and the authorized carrier in accordance with subsection (f).

Proposed subsection (e)(4) states that the alleged unauthorized telecommunications utility may challenge a complainant's allegation of an unauthorized change by notifying the complainant to file a complaint with the Public Utility Commission of Texas within 30 days and that if the complainant does not file a complaint within 30 days, the unpaid charges may be reinstated. AT&T commented that on the surface this provision looks beneficial to utilities; however, AT&T has been unable to assess how practical it would be to both track its compliance with the requirement to inform the customer and to track whether the customer subsequently files a complaint with the commission within 30 days. Consequently, at this point AT&T indicated it could not agree that this provision would provide a practical benefit to utilities. AT&T stated that, more importantly, it is concerned that proposed subsection (e)(4) might be viewed by the commission as some sort of mitigation of the objectionable requirement to remove all unpaid charges in proposed subsection (e)(3). AT&T further commented that if a timely complaint is filed, proposed subsection (e)(4) does not limit the removal of unpaid charges during the pendency of a complaint, so it does not address the concern raised by AT&T that proposed subsection (e)(3) would permit a customer to continue to receive service without paying for an extended period of time. Consequently, AT&T recommended proposed subsection (e)(3) be modified to reflect that only 30 days of unpaid charges should be removed.

MCI commented that proposed subsection (e)(4) is a beneficial addition if clarified as recommended by AT&T MCI suggested revising proposed subsection (e)(4) to add clarifying language and the requirement for the commission to provide the unauthorized carrier a copy of the complaint during the same 30-day period.

The commission adopts proposed subsection (e)(4) without changes. The commission believes the rule is clear and that MCI's suggested clarifying language is unnecessary. Nevertheless, the commission is sensitive to AT&T's and MCI's concerns and is committed to ensuring slamming complaints are forwarded to carriers promptly and resolved in a timely manner.

Proposed subsection (e)(5) requires that the alleged unauthorized telecommunications utility take all actions within its control to facilitate the customer's prompt return to the original telecommunication utility within three business days of the customer's request. SWBT commented that in the event of an alleged dial tone slam, however, an additional requirement is necessary to ensure that a customer is returned to his authorized utility within three business days. SWBT suggested adding language to proposed subsection (e)(5) requiring an alleged unauthorized dial tone provider to respond to the authorized dial tone provider with a Firm Order Confirmation (FOC) within one business day if the authorized carrier clearly indicates that the request is the result of an alleged slam. In addition, if the alleged unauthorized utility cannot meet the three business day interval, the unauthorized utility should inform the commission, the customer, and the authorized utility that this customer will experience a delayed return and inform them as to when the return will occur. SWBT indicated that this proposed provision is necessary so that customers can learn of their return date.

AT&T strongly opposed SWBT's proposal indicating it would result in the micro-managing of local slams and would introduce specialized treatment (which may be contrary to interconnection agreements) for handling local service customers merely on the basis of an alleged slam. AT&T commented that the commission is aware of the difficulty in switching local service customers and that returning the customer within three business days is ambitious enough. AT&T also expressed concern that SWBT's recommended change could cause customers or carriers to allege a slam in order to switch service faster. AT&T further stated that it would be unfair and inequitable to require an alleged unauthorized carrier to incur the additional costs of providing notices. AT&T concluded that the commission's proposed rule is sufficient and should not be revised.

MCI also disagreed with SWBT indicating that the proposed requirement for a one-business day turnaround for alleged local slams is unworkable. Verizon agreed with the intent of SWBT's proposal, but indicated that the commission should not prescribe the response time for an alleged unauthorized carrier until the commission completes Project Number 24389, *CLEC-to- CLEC Conversion Guidelines*.

The commission adopts proposed subsection (e)(5) without changes. While the commission agrees with the intent of SWBT's recommendation, it would not be appropriate at this time to require a one-day turnaround. Nevertheless, the commission expects all carriers to take all necessary actions to ensure customers are returned to their preferred carrier promptly after there is an alleged slam.

SWBT suggested a new subsection (e)(6), which makes the alleged unauthorized telecommunications utility liable for any charges required to change the customer from his or her authorized utility to the alleged unauthorized utility, in addition to charges assessed for returning the customer to his or her properly authorized telecommunications utility. SWBT indicated that this change ensures that neither the authorized telecommunications utility nor the customer incurs any expense as a result of the actions of an unauthorized utility. SWBT further commented that making the unauthorized telecommunications utility liable for these charges acts as a further deterrent to slamming and is consistent with FCC rules.

MCI stated that it does not oppose SWBT's proposal, but does oppose any charges that permit a carrier to disguise administrative penalties as unauthorized change charges. At the public hearing, AT&T voiced similar concerns. MCI recommended that if the commission determines that such charges are proper, then the charges should be uniform and reasonable and apply to all carriers.

Verizon supported SWBT's recommendation indicating that it puts the cost on the cost causer, the unauthorized carrier, and

not the customer or the authorized carrier. Verizon further commented that it would serve as a further deterrent to slamming and complies with the federal rules.

The commission agrees with SWBT's recommendation and adds subsection (e)(6), accordingly. The commission clarifies that this new provision applies to standard switching charges and in no way authorizes local exchange companies to levy any additional charges or penalties as a result of an alleged slam.

Verizon recommended adding a provision in subsection (e) that authorizes an alleged unauthorized carrier to invoke self-help in situations where it prefers not to challenge a specific unauthorized change allegation. Under this proposal any carrier selecting this option would be required to provide the customer all of the remedies of a valid slam and to advise the customer to file a complaint with the commission if not satisfied with the remedies offered. Verizon pointed out that the FCC has approved this means to resolve slamming complaints because it expedites delivery of relief and eases administrative burdens on governmental agencies.

The commission agrees with the self-help option described by Verizon and encourages carriers to provide prompt relief to customers alleging a slam. However, the commission does not believe a rule is needed for carriers to use the approach recommended by Verizon. The commission points out that many carriers, as a matter of standard practice, do not challenge any slamming complaint and provide the complainant with appropriate refunds. Neither the current or adopted rules discourage carriers from using this approach. The commission's approach is consistent with the FCC, which also encourages self-help, but did not deem it necessary to have a rule prescribing it.

Subsection (f), Unauthorized changes

AT&T recommended that a change similar to the one proposed for subsection (e)(3) be made to subsection (f)(1)(F) to clarify that unpaid charges need to be removed for only the first 30 days after a slamming allegation is made. In addition, AT&T recommended that subsection (f)(1) be clarified to indicate that the prescribed actions only apply in cases where a violation is found. MCI and Verizon agreed that the required actions in proposed subsection (f)(1) apply only if the commission finds a violation.

SWBT and Verizon proposed changing proposed subsection (f)(1) and (2) to comport with the absolution procedures set forth in 47 C.F.R. §64.1160 and §64.1170. The parties indicated that this change will ensure that the Texas absolution process is consistent with the FCC process and eliminate customer and utility confusion that could result from having different procedures in place in different jurisdictions.

OAG supported the decision of the commission to maintain its procedure in which the unauthorized carrier makes a direct refund to the customer. OAG pointed out that absolute consistency with the federal rules is not required and that the State did a better job of protecting the consumer than the federal rules. OAG stated that the commission's procedure is more directly responsive to the consumer's needs and more efficient since it does not unnecessarily involve the authorized carrier.

The commission adopts proposed subsection (f)(1) and (2) without changes. As stated in the commission's Order in Project Number 23375, the consistency provision in PURA §55.308 does not require that the commission rules duplicate those of the FCC. The FCC allows flexibility to the states with regard to remedies as indicated in CC Docket No. 94-129 FCC 00- 135, footnote 105. Also, in paragraph 87 of CC Docket No. 94-129 FCC 00-255, the FCC states that they will not interfere with the state's ability to adopt more stringent regulations, that they must work hand-in-hand with the states to combat slamming, and that states have valuable insight into slamming problems in their respective locales.

Subsection (f)(1) requires the unauthorized carrier to make a direct refund to the customer based on all charges for the first 30 days after a slam and a re-rating of charges after the first 30 days. The unauthorized carrier is also required to pay the authorized carrier any amount paid to it by the customer that would have been paid to the authorized carrier if the slam had not occurred. The FCC rules require the unauthorized carrier to pay the authorized carrier 150% of the amount paid by the customer and the authorized carrier to refund the customer 50% of the amount paid by the customer. While the commission's approach does not duplicate the FCC's procedures, it is consistent with the FCC's objectives and purpose.

The FCC requires the unauthorized carrier to pay the authorized carrier and then the authorized carrier makes the refund to the customer. If, however, the authorized carrier does not receive payment from the unauthorized carrier, the authorized carrier must inform the customer of this and the customer's right to pursue a claim against the unauthorized carrier. This refunding process was based on the original FCC approach, which required the authorized carrier to resolve slamming complaints. Under the new approach where either the FCC or the states that opt-in will resolve the complaints, it is more efficient and effective to have the unauthorized carrier make a direct refund to the customer.

AT&T recommended a new provision for proposed subsection (f) that would prohibit carriers from attempting to levy additional charges or "penalties" on an alleged unauthorized carrier. AT&T stated that it has encountered attempts to add such provisions in Texas as well as in other jurisdictions and that attempts to add such provisions in Texas and other jurisdictions have been previously rejected. AT&T requested the addition of appropriate language so that it does not have to devote the time and resources to constantly guard against such proposals and contest them in tariff filings.

SWBT and Verizon opposed AT&T's proposal stating that the proposed language is not consistent with federal and state slamming rules, which provide that the customer has a right to be made whole at the allegation of a slam. SWBT further noted that the alleged unauthorized carrier may re-bill the customer if the customer does not file a complaint or if the FCC or commission determine that an unauthorized switch did not occur. Verizon stated that the executing carrier should not be required to bear the burden of recovering the switchback charge and that, instead, the alleged unauthorized carrier is in the best position to incur the charge.

The commission does not agree with AT&T's recommended additional provision. The commission points out that there is nothing in these adopted rules that permits executing carriers to levy any penalty for alleged slamming.

Subsection (g), Notice of customer rights

SWBT proposed changing the notification requirement in proposed subsection (g) to reflect SWBT's recommended changes to proposed subsection (f)(1) and (2), above.

The commission makes no changes to subsection (g) since SWBT's recommended changes to proposed subsection (f)(1) and (2) were not adopted.

Subsection (h), Compliance and enforcement

AT&T recommended that subsection (h)(1) be clarified to indicate that the telecommunications utility has no obligation to provide copies of records after the 24-month record retention period (as required under proposed subsection (c)(1)) has expired. AT&T commented that based on the commission's orders in Project Number 20934, *Office of Customer Protection (OCP) Investigation of Axces, Inc. for Continued Violations of P.U.C. SUBST. R. 26.130, Selection of Telecommunications Utilities, Pursuant to Procedural Rules 22.246, Administrative Penalties*, it seems almost inescapable that a carrier would be unable to meet its burden in the case of an alleged "regulatory slam." At a minimum, AT&T stated that a telecommunications utility should not be subject to sanctions under proposed subsection (h)(1) for failure to maintain records after the record retention period in proposed subsection (c)(1) has expired.

Additionally, AT&T proposed that a new subsection (h)(5) be added to specifically prohibit any enforcement action against the telecommunications utility after 24 months has elapsed from the date of an alleged slam. AT&T commented that a telecommunications utility should not be penalized for the customer's delay and lack of diligence, particularly since every bill the customer received during that 24-month period would have listed the customer's preferred telecommunications utility, as required by subsection (i). AT&T stated that a complaint received after the 24-month record retention period should simply be treated as a request to change to a different carrier (presumably back to the customer's previous carrier), and the allegedly unauthorized carrier should be required to facilitate the return to the previous carrier, but it should not be treated as an unauthorized telecommunications utility under the rule and should not be subject to any penalties or refund requirement.

Verizon agreed with AT&T's recommendations and further proposed that the commission adopt the federal two-year statute of limitations on slamming complaints so that the record retention requirement is coextensive with the customer's right to maintain a slamming complaint.

OAG opposed AT&T's recommendations. OAG commented that the records retention requirement should not serve as a shield to the customer's right to complain and recover or the commission's right to take action if any party has maintained records or is otherwise able to prove through other means that a violation occurred more than two years prior to the present date. OAG further stated that to allow carriers to restrict enforcement action and consumer recovery on the basis of their own records retention policies is an unconscionable restriction on consumer rights.

The commission adopts proposed subsection (h) without changes. The commission agrees with OAG that record retention requirements should not limit the consumer's or the commission's rights. While filing a complaint two years or more after a slam is very rare, the commission has never limited the time period for a complaint and to do so now would dilute current customer protection.

Subsection (i), Notice of identity of a customer's telecommunications utility

Proposed subsection (i)(4) would change the bill notice provision to refer to the "Customer Protection Division" instead of the "Office of Customer Protection". AT&T commented that, although this appears to be a minor change, it would result in additional cost to telecommunications utilities to make this change in their billing system. AT&T proposed that all references to CPD or OCP simply be deleted so that carriers do not have to change their billing systems each time the commission reorganizes or renames its divisions. AT&T further indicated that this approach was adopted in the cramming rule, §26.32(g)(4), so that the notice required in that section does not specifically refer to any division of the commission. AT&T recommended that a similar change be adopted here.

The commission agrees with AT&T's recommendation and revises proposed subsection (i)(4) accordingly.

Subsection (j), Preferred telecommunications utility freezes

SWBT recommended revising proposed subsection (j)(8), (4)(D), (6)(G)(iv), (12), (13), and (14) to permit a local exchange company (LEC) to charge the customer for imposing or lifting a freeze. SWBT pointed out that the FCC allows these charges, but the Texas rule does not. SWBT commented that LECs should be permitted to recover costs for providing freeze protection service to customers since LECs incur significant costs associated with administering freeze protection services - services that both customers and telecommunications utilities recognize to be a valuable deterrent against unauthorized changes. SWBT further pointed out that both the Texas and FCC slamming rules make offering freeze protection services discretionary with the LEC and that allowing LECs to recover costs associated with these services will encourage LECs to continue to offer these services and assist in the deterrence of slamming.

AT&T opposed SWBT's recommendation. AT&T commented that allowing LECs to charge for freezes would undermine the benefits of freezes, that the prohibition on charges for freezes does not appear to have deterred LECs from offering freezes, and that imposing charges would deter some customers from requesting freeze protection. AT&T also expressed concern that SWBT would be able to charge any rate it chose and indicated that if the commission were to allow freeze charges, existing customers should be grandfathered from any charges and the LEC rates should be cost-based.

Consumers Union and OAG recommended that SWBT's proposal be rejected. The parties stated the proposal would erode customer protection and that consumers should not be required to pay a premium in order to protect their legal right to be served by the company of their own choosing.

The commission considered the issue of allowing charges for freezes when it adopted the current rule in Project Number 21419. The commission remains convinced that a freeze is a basic customer protection that should be made available to customers at no charge. The commission believes that this prohibition is not in conflict with FCC rules, which allow a charge, but do not require it. Therefore, the commission adopts proposed subsection (j) without changes.

AT&T proposed a new provision to proposed subsection (j), which would allow a customer to change carriers by directly contacting the LEC during a three-way call to lift a freeze. AT&T commented that under the current rule, to accomplish a change when there is a freeze on the line, the customer must make two separate calls to the LEC. First, the customer contacts the new

preferred carrier and selects the appropriate services. However, if there is a freeze on the line, the customer and preferred carrier must make a three-way call to notify the LEC to lift the freeze so the customer may change the preferred interexchange carrier (PIC) selection. AT&T stated that under subsection (c)(2) of the proposed rules the customer can change the PIC selection by contacting the LEC, but some LECs have refused to accept such a change order from the customer as part of the three-way call. As a result, the customer must make another call to the LEC to make the change or must go through some other form of verification. AT&T indicated that there is no need for this two-step process.

Verizon disagreed with AT&T's proposal. Verizon pointed out under the proposal, submitting carriers could circumvent the TPV process and may lead to "finger-pointing" in the event of an unauthorized change. Verizon also indicated that this proposal was specifically rejected by the FCC.

The commission does not adopt AT&T's proposal to require a LEC to accept the customer's oral request to change a preferred carrier as part of a three-way call to lift a freeze. The FCC requires three-way calling only for the purpose of lifting freezes. There are separate, explicit FCC rules for verification of carrier changes and for verification of freezes that clearly distinguish the role of each carrier. The FCC has stated that the three-way call merely lifts the freeze and that the submitting carrier must follow the federal commission's verification rules before submitting a carrier change.

Subsection (k), Transferring customers from one telecommunications utility to another

Verizon recommended that proposed subsection (k) be modified to track with the corresponding federal rule, 47 C.F.R. §64.1200(e)(3). Verizon believes that consistency in state and federal rules reduces administrative burdens on utilities and eliminates customer confusion.

The commission believes proposed subsection (k) is consistent with the FCC rule and adopts it without changes. The commission's rule prescribing notice requirements related to the transfer of customers, preceded the FCC's rule. Proposed subsection (k) added FCC requirements that were not already in the current rule.

Subsection (l), Complaints to the commission

Consistent with AT&T's proposed revisions to subsection (h) discussed above, AT&T also proposed that subsection (l) be revised to limit the obligations of utilities when a complaint is filed after the record retention period in the rules has expired. AT&T claimed that it is not unreasonable for consumers to be obligated to bring a complaint of slamming within two years of the time that they were first provided service by a new utility.

As previously discussed, the commission does not agree with AT&T's proposal.

SWBT proposed increasing the time for a telecommunications utility to respond to the Customer Protection Division (CPD) on a complaint from 21 to 30 days. SWBT indicated that this period is consistent with 47 C.F.R. §64.1150(d), which allows 30 days for a telecommunications utility's response to an alleged slamming violation. SWBT maintained that the additional time is needed to allow a utility to adequately research a complaint and compile a response that will contain the necessary information about the change request and the verification for that customer's change request. MCI agreed with SWBT's recommendation.

OAG and Consumers Union stated that proposals to extend the time for responding to complaints should be rejected. They pointed out that extending the timeline is contrary to the clear directive of the legislators and the commissioners to streamline the consumer complaint process and that the focus should be on reducing everyone's response time.

At the public hearing Sprint, MCI, and AT&T expressed concerns about shortening the response time for complaints, responding to a batch of complaints simultaneously, and receiving complaints lacking adequate information to investigate.

The commission does not agree with the recommendation to increase the time required to respond to a complaint. Instead, the commission is focused on reducing response time without sacrificing complaint investigation quality.

AT&T expressed concern at the public hearing that proposed subsection (l)(1) replaced a list of specific items that should be in a complaint with language indicating that a complaint should include appropriate information. AT&T stated that specific information about the complaint is essential and that for business complaints additional information is necessary such as the name of the business, main billing number, and contact person and number. Commission staff explained that the intent of the proposed change to subsection (l)(1) was to indicate that some complaints forwarded to the telecommunications utility may not contain all of the listed information. CPD would continue to request all of the information listed in current subsection (l)(1). However, if the complainant failed to provide all of the items required in current subsection (l)(1), *i.e.*, a copy of the bill, but provided sufficient information to investigate the complaint, then the complaint would be forwarded to the telecommunications utility. To address the concerns about proposed subsection (l)(1), OAG recommended changing the focus slightly by having the rule say: "CPD shall request the following information." AT&T concurred with OAG's recommendation.

The commission revises proposed subsection (l)(1) to adopt the language recommended by OAG.

Penalty Matrix

AT&T recommended that the proposed rule be amended to include a penalty matrix to indicate the range of administrative penalties that would be proposed in the event of a violation of the rule. AT&T stated that the criteria for assessing an administrative penalty under PURA §15.023(c) make it clear that not all incidents of slamming should be subject to the same penalty. AT&T commented that the commission's recent Order Remanding for Further Consideration in Project Number 20934 indicates that the commission recognizes that not all slamming violations are automatically deserving the maximum penalty of $5,000 per day, and that the amount of the penalty should vary with the seriousness of the violation, including whether the violation is "administrative in nature." AT&T strongly encouraged the commission to develop a matrix of recommended penalties based on the seriousness of the alleged violation, to do so with the input of all stakeholders, and to formally adopt such a matrix. AT&T stated that this would provide predictability for carriers and staff, and should result in more efficient settlement of notices of apparent violation.

MCI supported AT&T's request to include a penalty matrix indicating that it will serve to ensure consistency and even-handedness in the commission's enforcement and imposition of administrative penalties.

Consumers Union advocated that the penalty matrix be rejected, pointing out that inclusion is beyond the scope of this rulemaking and would require republication. Furthermore, the commission already has flexibility to propose penalties based on the nature and severity of the rules violation. For example, slamming enforcement cases generally result in settlements where the commission has the flexibility to consider various factors, such as culpability and the carrier's pattern of behavior, before reaching an agreement on the settlement amount. The commission's own review and analysis of each enforcement action should not be replaced with a standardized penalty matrix. Consumers Union indicated that a penalty matrix is likely to become a "price list" for telecommunication utilities, so they know the potential financial implication of cutting corners on strict adherence to the rules.

OAG indicated that this rulemaking was not properly noticed for the adoption of a penalty matrix. OAG commented that while there may be some potential benefit to a matrix, there are drawbacks as well in creating a system where potential violators can calculate, in advance, the exact cost of regulatory violations and plan a business strategy around them. OAG further stated that all of these factors and their implications for all aspects of the commission's rules, not just slamming, should be considered in a properly noticed rulemaking on the subject of a penalty matrix.

The commission agrees that including a penalty matrix would be beyond the scope of this rulemaking and has not yet decided whether a penalty matrix should be developed. The commission acknowledges the view of some carriers that a penalty matrix would promote consistent and fair enforcement. However, the commission also recognizes the potential disadvantages of a penalty matrix such as a loss of flexibility, perception of diminished resolve to combat slamming, and reduced efforts by carriers to prevent unauthorized switches in service.

Since the commission was granted jurisdiction over slamming in September 1997, it has taken a strong stance against slamming in this state and Texas has been recognized as one of the leading states in combating slamming. In keeping with a "zero tolerance for slamming" policy, the strict liability requirement on carriers to obtain customer consent, and consideration of all of the pertinent factors in P.U.C. Procedural Rule §22.246(c), Administrative Penalties, commission staff has consistently recommended a penalty of $5,000 per violation in its administrative penalty notices for slamming violations. Upon receiving a notice, in accordance with §22.246, alleged violators are given three options: pay the penalty, request a hearing, or request a settlement conference to discuss the occurrence of the violation and/or the amount of the penalty. In every case, the alleged violator has responded to a notice by requesting a settlement conference. At the settlement conference the carrier is able to present any information to address the nature of the violation and the appropriateness of the penalty amount. With the exception of Project Number 20934 and Docket Number 24673, *Notice of Intent to Assess an Administrative Penalty and Revoke Registration of Axces, Inc. for Repeated and Reckless Violations of PUC SUBST. R. §26.130, Selection of Telecommunications Utilities*, commission staff has reached settlement agreements with carriers who were issued a notice for slamming violations and the commission has approved these agreements. The final settlement amount was based on a consideration of the information provided by the carrier and often was less than $5,000 per violation. There has never been an automatic $5,000 penalty for every slamming violation. The commission believes that its approach has been consistent, fair, and reasonable.

In the Order Remanding for Further Consideration in Project Number 20934, the commission stated it does not favor automatically imposing a $5,000 administrative penalty for each violation, noting that certain violations are administrative in nature and may warrant an administrative penalty of less than $5,000.

The commission reaffirms its policy of "zero tolerance for slamming." Slamming harms not only the customers that are slammed, but also the carriers who have implemented effective policies and procedures to ensure customer consent before switching service. The commission states that administrative penalties shall be consistent with that policy and must not be viewed as a cost of doing business, but instead serve as a deterrent.

In summary, the commission believes that its anti-slamming policy and enforcement approach have served the public interest well without denying carriers their due process. Nevertheless, the commission will reexamine its process to determine if development of a penalty matrix or any other changes will enhance the current process.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this amendment, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted 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; and specifically PURA §55.302 which grants the commission authority to adopt and enforce rules to implement the provisions of PURA Chapter 55, Subchapter K, Selection of Telecommunications Utilities.

Cross Index to Statutes: Public Utility Regulatory Act §§14.002 and 55.301 - 55.308.

§26.130. Selection of Telecommunications Utilities.

(a) Purpose and Application.

(1) Purpose. The provisions of this section are intended to ensure that all customers in this state are protected from an unauthorized change in a customer's local or long- distance telecommunications utility.

(2) Application. This section, including any references in this section to requirements in 47 Code of Federal Regulations (C.F.R.) §64.1120 and §64.1130 (changing long distance service), applies to all "telecommunications utilities," as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to an unauthorized charge unrelated to a change in preferred telecommunications utility which is addressed in §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

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

(1) Authorized telecommunications utility - Any telecommunications utility that submits a change request that is in accordance with the requirements of this section.

(2) Customer - Any person, and that person's spouse, in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to be billed for telephone service.

(3) Executing telecommunications utility - Any telecommunications utility that effects a request that a customer's preferred telecommunications utility be changed. A telecommunications utility may be treated as an executing telecommunications utility; however, if it is responsible for any unreasonable delays in the execution of telecommunications utility changes or for the execution of unauthorized telecommunications utility changes, including fraudulent authorizations.

(4) Submitting telecommunications utility - Any telecommunications utility that requests on behalf of a customer that the customer's preferred telecommunications utility be changed.

(5) Unauthorized telecommunications utility - Any telecommunications utility that submits a change request that is not in accordance with the requirements of this section.

(c) Changes in preferred telecommunications utility.

(1) Changes by a telecommunications utility. Before a change order is processed, the submitting telecommunications utility must obtain verification from the customer that such change is desired for each affected telephone line(s) and ensure that such verification is obtained in accordance with 47 C.F.R. §64.1120. In the case of a change by written solicitation, the submitting telecommunications utility must obtain verification as specified in 47 C.F.R. §64.1130, and subsection (d) of this section, relating to Letters of Agency. The submitting telecommunications utility shall submit a change order within 60 days after obtaining verification from the customer. The submitting telecommunications utility must maintain records of all changes, including verifications, for a period of 24 months and shall provide such records to the customer, if the customer challenges the change, and to the Public Utility Commission (commission) staff upon request. A change order must be verified by one of the following methods:

(A) Written or electronically signed authorization from the customer in a form that meets the requirements of subsection (d) of this section. A customer shall be provided the option of using another authorization method in lieu of an electronically signed authorization.

(B) Electronic authorization placed from the telephone number which is the subject of the change order except in exchanges where automatic recording of the automatic number identification (ANI) from the local switching system is not technically possible. The submitting telecommunications utility must:

(i) ensure that the electronic authorization confirms the information described in subsection (d)(3) of this section; and

(ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change so that a customer calling toll-free number(s) will reach a voice response unit or similar mechanism that records the required information regarding the change and automatically records the ANI from the local switching system.

(C) Oral authorization by the customer for the change that meets the following requirements:

(i) The customer's authorization shall be given to an appropriately qualified and independent third party that confirms appropriate verification data such as the customer's date of birth or mother's maiden name.

(ii) The verification must be electronically recorded in its entirety on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

(iii) The recording shall include clear and conspicuous confirmation that the customer authorized the change in telephone service provider.

(iv) The third party verification shall elicit, at minimum, the identity of the customer, confirmation that the person on the call is authorized to make the change in service, the names of the telecommunications utilities affected by the change, the telephone number(s) to be switched, and the type of service involved.

(v) The third party verification shall be conducted in the same language used in the sales transaction.

(vi) Automated systems shall provide customers the option of speaking with a live person at any time during the call.

(vii) A telecommunications utility or its sales representative initiating a three-way call or a call through an automated verification system shall drop off the call once a three-way connection has been established.

(viii) The independent third party shall:

(I) not be owned, managed, or directly controlled by the telecommunications utility or the telecommunications utility's marketing agent;

(II) not have financial incentive to confirm change orders; and

(III) operate in a location physically separate from the telecommunications utility or the telecommunications utility's marketing agent.

(2) Changes by customer request directly to the local exchange company. If a customer requests a change in preferred telecommunications utility by contacting the local exchange company directly and the local exchange company is not the chosen carrier or affiliate of the chosen carrier, the verification requirements in paragraph (1) of this subsection do not apply. The local exchange company shall maintain a record of the customer's request for 24 months.

(d) Letters of Agency (LOA). A written or electronically signed authorization from a customer for a change of telecommunications utility shall use a letter of agency (LOA) as specified in this subsection:

(1) The LOA shall be a separate or easily separable document or located on a separate screen or webpage containing only the authorizing language described in paragraph (3) of this subsection for the sole purpose of authorizing the telecommunications utility to initiate a telecommunications utility change. The LOA must be signed and dated by the customer requesting the telecommunications utility change. An LOA submitted with an electronically signed authorization shall include the consumer disclosures required by the *Electronic Signatures in Global and National Commerce Act* §101(c).

(2) The LOA shall not be combined with inducements of any kind on the same document, screen, or webpage except that the LOA may be combined with a check as specified in subparagraphs (A) and (B) of this paragraph:

(A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.

(B) A check combined with an LOA shall not contain any promotional language or material but shall contain on the front and back of the check in easily readable, bold-faced type near the signature line, a notice similar in content to the following: "By signing this check, I am authorizing (name of the telecommunications utility) to be my

new telephone service provider for (the type of service that will be provided)."

(3) LOA language.

(A) At a minimum, the LOA shall be printed with sufficient size and readable type to be clearly legible and shall contain clear and unambiguous language that confirms:

(i) the customer's billing name and address and each telephone number to be covered by the preferred telecommunications utility change order;

(ii) the decision to change preferred carrier from the current telecommunications utility to the new telecommunications utility and identifies each;

(iii) that the customer designates (name of the new telecommunications utility) to act as the customer's agent for the preferred carrier change;

(iv) that the customer understands that only one preferred telecommunications utility may be designated for each type of service (local, intraLATA, and interLATA) for each telephone number. The LOA shall contain separate statements regarding those choices, although a separate LOA for each service is not required; and

(v) that the customer understands that any preferred carrier selection the customer chooses may involve a one-time charge to the customer for changing the customer's preferred telecommunications utility and that the customer may consult with the carrier as to whether a fee applies to the change.

(B) The following LOA form meets the requirements of this subsection. Other versions may be used, but shall comply with all of the requirements of this subsection.
Figure: 16 TAC §26.130(d)(3)(B)

(4) The LOA shall not require that a customer take some action in order to retain the customer's current telecommunications utility.

(5) If any portion of an LOA is translated into another language, then all portions must be translated. The LOA must be translated into the same language as promotional materials, oral descriptions or instructions provided with the LOA.

(e) Notification of alleged unauthorized change.

(1) When a customer informs an executing telecommunications utility of an alleged unauthorized telecommunications utility change, the executing telecommunications utility shall immediately notify both the authorized and alleged unauthorized telecommunications utility of the incident.

(2) Any telecommunications utility, executing, authorized, or alleged unauthorized, that is informed of an alleged unauthorized telecommunications utility change shall direct the customer to contact the Public Utility Commission of Texas.

(3) The alleged unauthorized telecommunications utility shall remove all unpaid charges pending a determination of whether an unauthorized change occurred.

(4) The alleged unauthorized telecommunications utility may challenge a complainant's allegation of an unauthorized change by notifying the complainant to file a complaint with the Public Utility Commission of Texas within 30 days. If the complainant does not file a complaint within 30 days, the unpaid charges may be reinstated.

(5) The alleged unauthorized telecommunications utility shall take all actions within its control to facilitate the customer's prompt return to the original telecommunication utility within three business days of the customer's request.

(6) The alleged unauthorized telecommunications utility shall also be liable to the customer for any charges assessed to change the customer from the authorized telecommunications utility to the alleged unauthorized telecommunications utility in addition to charges assessed for returning the customer to the authorized telecommunications utility.

(f) Unauthorized changes.

(1) Responsibilities of the telecommunications utility that initiated the change. If a customer's telecommunications utility is changed without verification consistent with this section, the telecommunications utility that initiated the unauthorized change shall:

(A) take all actions within its control to facilitate the customer's prompt return to the original telecommunication utility within three business days of the customer's request;

(B) pay all charges associated with returning the customer to the original telecommunications utility within five business days of the customer's request;

(C) provide all billing records to the original telecommunications utility related to the unauthorized change of services within ten business days of the customer's request;

(D) pay the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the unauthorized change had not occurred, within 30 business days of the customer's request;

(E) return to the customer within 30 business days of the customer's request:

(i) any amount paid by the customer for charges incurred during the first 30 days after the date of an unauthorized change; and

(ii) any amount paid by the customer after the first 30 days in excess of the charges that would have been charged if the unauthorized change had not occurred; and

(F) remove all unpaid charges.

(2) Responsibilities of the original telecommunications utility. The original telecommunications utility shall:

(A) inform the telecommunications utility that initiated the unauthorized change of the amount that would have been charged for identical services if the unauthorized change had not occurred, within ten business days of the receipt of the billing records required under paragraph (1)(C) of this subsection;

(B) where possible, provide to the customer all benefits associated with the service, such as frequent flyer miles that would have been awarded had the unauthorized change not occurred, on receiving payment for service provided during the unauthorized change;

(C) maintain a record of customers that experienced an unauthorized change in telecommunications utilities that contains:

(i) the name of the telecommunications utility that initiated the unauthorized change;

(ii) the telephone number(s) affected by the unauthorized change;

(iii) the date the customer asked the telecommunications utility that made the unauthorized change to return the customer to the original telecommunications utility; and

(iv) the date the customer was returned to the original telecommunications utility; and

(D) not bill the customer for any charges incurred during the first 30 days after the unauthorized change, but may bill the customer for unpaid charges incurred after the first 30 days based on what it would have charged if the unauthorized change had not occurred.

(g) Notice of customer rights.

(1) Each telecommunications utility shall make available to its customers the notice set out in paragraph (3) of this subsection.

(2) Each notice provided under paragraph (5)(A) of this subsection shall contain the name, address and telephone numbers where a customer can contact the telecommunications utility.

(3) Customer notice. The notice shall state:
Figure: 16 TAC §26.130(g)(3) (No change.)

(4) The customer notice requirements in paragraph (3) of this subsection may be combined with the notice requirements of §26.32(g)(1) and (2) of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) if all of the information required by each is in the combined notice.

(5) Language, distribution and timing of notice.

(A) Telecommunications utilities shall send the notice to new customers at the time service is initiated, and upon customer request.

(B) Each telecommunications utility shall print the notice in the white pages of its telephone directories, beginning with any directories published 30 days after the effective date of this section and thereafter. The notice that appears in the directory is not required to list the information contained in paragraph (2) of this subsection.

(C) The notice shall be in both English and Spanish as necessary to adequately inform the customer. The commission may exempt a telecommunications utility from the Spanish requirement if the telecommunications utility shows that 10% or fewer of its customers are exclusively Spanish- speaking, and that the telecommunications utility will notify all customers through a statement in both English and Spanish that the information is available in Spanish by mail from the telecommunications utility or at the utility's offices.

(h) Compliance and enforcement.

(1) Records of customer verifications and unauthorized changes. A telecommunications utility shall provide a copy of records maintained under the requirements of subsections (c), (d), and (f)(2)(C) of this section to the commission staff upon request.

(2) Administrative penalties. If the commission finds that a telecommunications utility is in violation of this section, the commission shall order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties pursuant to the Public Utility Regulatory Act (PURA) §15.023 and §15.024.

(3) Certificate revocation. If the commission finds that a telecommunications utility is repeatedly and recklessly in violation of this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the telecommunications utility, thereby denying the telecommunications utility the right to provide service in this state.

(4) Coordination with the office of the attorney general. The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the office of the attorney general in order to ensure consistent treatment of specific alleged violations.

(i) Notice of identity of a customer's telecommunications utility. Any bill for telecommunications services must contain the following information in easily-read, bold type in each bill sent to a customer. Where charges for multiple lines are included in a single bill, this information must appear on the first page of the bill if possible or displayed prominently elsewhere in the bill:

(1) The name and telephone number of the telecommunications utility providing local exchange service if the bill is for local exchange service.

(2) The name and telephone number of the primary interexchange carrier if the bill is for interexchange service.

(3) The name and telephone number of the local exchange and interexchange providers if the local exchange provider is billing for the interexchange carrier. The commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.

(4) A statement that customers who believe they have been slammed may contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, fax: (512) 936-7003, e- mail address: customer@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. This statement may be combined with the statement requirements of §26.32(g)(4) of this title if all of the information required by each is in the combined statement.

(j) Preferred telecommunications utility freezes.

(1) Purpose. A preferred telecommunications utility freeze ("freeze") prevents a change in a customer's preferred telecommunications utility selection unless the customer gives consent to the local exchange company that implemented the freeze.

(2) Nondiscrimination. All local exchange companies that offer freezes shall offer freezes on a nondiscriminatory basis to all customers regardless of the customer's telecommunications utility selection except for local telephone service.

(3) Type of service. Customer information on freezes shall clearly distinguish between intraLATA and interLATA telecommunications services. The local exchange company offering a freeze shall obtain separate authorization for each service for which a freeze is requested.

(4) Freeze information. All information provided by a telecommunications utility about freezes shall have the sole purpose of educating customers and providing information in a neutral way to allow the customer to make an informed decision, and shall not market or induce the customer to request a freeze. The freeze information provided to customers shall include:

(A) a clear, neutral explanation of what a freeze is and what services are subject to a freeze;

(B) instructions on lifting a freeze that make it clear that these steps are in addition to required verification for a change in preferred telecommunications utility;

(C) an explanation that the customer will be unable to make a change in telecommunications utility selection unless the customer lifts the freeze; and

(D) a statement that there is no charge to the customer to impose or lift a freeze.

(5) Freeze verification. A local exchange company shall not implement a freeze unless the customer's request is verified using one of the following procedures:

(A) A written and signed or electronically signed authorization that meets the requirements of paragraph (6) of this subsection.

(B) An electronic authorization placed from the telephone number on which a freeze is to be imposed. The electronic authorization shall confirm appropriate verification data such as the customer's date of birth or mother's maiden name and the information required in paragraph (6)(G) of this subsection. The local exchange company shall establish one or more toll-free telephone numbers exclusively for this purpose. Calls to the number(s) will connect the customer to a voice response unit or similar mechanism that records the information including the originating ANI.

(C) An appropriately qualified independent third party obtains the customer's oral authorization to submit the freeze and confirms appropriate verification data such as the customer's date of birth or mother's maiden name and the information required in paragraph (6)(G) of this subsection. This shall include clear and conspicuous confirmation that the customer authorized a freeze. The independent third party shall:

(i) not be owned, managed, or directly controlled by the local exchange company or the local exchange company's marketing agent;

(ii) not have financial incentive to confirm freeze requests; and

(iii) operate in a location physically separate from the local exchange company or its marketing agent.

(D) Any other method approved by Federal Communications Commission rule or order granting a waiver.

(6) Written authorization. A written freeze authorization shall:

(A) be a separate or easily separable document with the sole purpose of imposing a freeze;

(B) be signed and dated by the customer;

(C) not be combined with inducements of any kind;

(D) be completely translated into another language if any portion is translated;

(E) be translated into the same language as any educational materials, oral descriptions, or instructions provided with the written freeze authorization;

(F) be printed with readable type of sufficient size to be clearly legible; and

(G) contain clear and unambiguous language that confirms:

(i) the customer's name, address, and telephone number(s) to be covered by the freeze;

(ii) the decision to impose a freeze on the telephone number(s) and the particular service with a separate statement for each service to be frozen;

(iii) that the customer understands that a change in telecommunications utility cannot be made unless the customer lifts the freeze; and

(iv) that the customer understands that there is no charge for imposing or lifting a freeze.

(7) Lifting freezes. A local exchange company that executes a freeze request shall allow customers to lift a freeze by:

(A) written and signed or electronically signed authorization stating the customer's intent to lift a freeze;

(B) oral authorization stating an intent to lift a freeze confirmed by the local exchange company with appropriate confirmation verification data such as the customer's date of birth or mother's maiden name;

(C) a three-way conference call with the local exchange company, the telecommunications utility that will provide the service, and the customer; or

(D) any other method approved by Federal Communications Commission rule or order granting a waiver.

(8) No customer charge. The customer shall not be charged for imposing or lifting a freeze.

(9) Local service freeze prohibition. A local exchange company shall not impose a freeze on local telephone service.

(10) Marketing prohibition. A local exchange company shall not initiate any marketing of its services during the process of implementing or lifting a freeze.

(11) Freeze records retention. A local exchange company shall maintain records of all freezes and verifications for a period of 24 months and shall provide these records to customers and to the commission staff upon request.

(12) Suggested freeze information language. Telecommunications utilities that inform customers about freezes may use the following language. Other versions may be used, but shall comply with all of the requirements of paragraph (4) of this subsection.
Figure: 16 TAC §26.130(j)(12) (No change.)

(13) Suggested freeze authorization form. The following form is recommended for written authorization from a customer requesting a freeze. Other versions may be used, but shall comply with all of the requirements of paragraph (6) of this subsection.
Figure: 16 TAC §26.130(j)(13) (No change.)

(14) Suggested freeze lift form. The following form is recommended for written authorization to lift a freeze. Other versions may be used, but shall comply with all of the requirements of paragraph (7) of this subsection.
Figure: 16 TAC §26.130(j)(14) (No change.)

(k) Transferring customers from one telecommunications utility to another.

(1) Any telecommunications utility that will acquire customers from another telecommunications utility that will no longer provide service due to acquisition, merger, bankruptcy or any other reason, shall provide notice to every affected customer. The notice shall be in a billing insert or separate mailing at least 30 days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 days prior to the transfer, the notice shall be sent promptly after all legal and regulatory conditions are met. The notice shall:

(A) identify the current and acquiring telecommunications utilities;

(B) explain why the customer will not be able to remain with the current telecommunications utility;

(C) explain that the customer has a choice of selecting a service provider and may select the acquiring telecommunications

utility or any other telecommunications utility and that the customer may incur a charge if the customer selects another telecommunications utility;

(D) explain that if the customer wants another telecommunications utility, the customer should contact that telecommunication utility or the local telephone company;

(E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;

(F) identify the effective date that customers will be transferred to the acquiring telecommunications utility;

(G) provide the rates and conditions of service of the acquiring telecommunications utility and how the customer will be notified of any changes;

(H) explain that the customer will not incur any charges associated with the transfer;

(I) explain whether the acquiring carrier will be responsible for handling complaints against the transferring carrier; and

(J) provide a toll-free telephone number for a customer to call for additional information.

(2) The acquiring telecommunications utility shall provide the Customer Protection Division (CPD) with a copy of the notice when it is sent to customers.

(l) Complaints to the commission. A customer may file a complaint with the commission's Customer Protection Division against a telecommunications utility for any reasons related to the provisions of this section.

(1) Customer complaint information. CPD shall request the following information:

(A) the customer's name, address, and telephone number;

(B) a brief description of the facts of the complaint;

(C) a copy of the customer's and spouse's legal signature; and

(D) a copy of the most recent phone bill and any prior phone bill that shows the switch in carrier.

(2) Telecommunications utility's response to complaint. After review of a customer's complaint, CPD shall forward the complaint to the telecommunications utility. The telecommunications utility shall respond to CPD within 21 calendar days after CPD forwards the complaint. The telecommunications utility's response shall include the following:

(A) all documentation related to the authorization and verification used to switch the customer's service; and

(B) all corrective actions taken as required by subsection (f) of this section, if the switch in service was not verified in accordance with subsections (c) and (d) of this section.

(3) CPD investigation. CPD shall review all of the information related to the complaint and make a determination on whether or not the telecommunications utility complied with the requirements of this section. CPD shall inform the complainant and the alleged unauthorized telecommunications utility of the results of the investigation and identify any additional corrective actions that may be required. CPD shall also inform the authorized telecommunications utility if there was an unauthorized change in service.

(m) Reporting requirement. Each telecommunications utility shall file a semiannual slamming report with the commission's Central Records in the assigned project number as required by paragraphs (1) and (2) of this subsection. A project number will be assigned each calendar year for this report.

(1) The report shall use the format and information required by 47 C.F.R. §64.1180 containing only Texas-specific data.

(2) Reports shall be submitted on August 31 (covering January 1 through June 30) and February 28 (covering July 1 through December 31).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7308

PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 103. GENERAL RULES

16 TAC §103.3

The Texas Motor Vehicle Board adopts amendments to §103.3, Amended License, with changes to the text published in the March 1, 2002 issue of the *Texas Register* (27 TexReg 1420).

The amendments describe the procedure for a new motor vehicle dealer to seek an amendment or new license when the dealer changes the form of its business entity. The amendments also describe the conditions under which the new entity is required to submit a new franchise agreement. Board members expressed concern that the language as proposed for 16 TAC §103.3(d) would allow an entity to change the ownership of the dealership, as well as the business form, without submitting a new franchise agreement. To address this concern, the Board added further language to clarify that subsection (d) does not apply to a dealer who changes ownership of the original entity seeking to convert.

Section 103.3 is amended by adding subsections (d) and (e). Section 103.3(d) permits a franchised motor vehicle dealer who changes or converts its business entity from one business form to another business form to do business as the new entity under the terms of the dealer's existing franchise agreement until the parties mutually elect to replace that agreement. Section 103.3(e) permits a franchised motor vehicle dealer who converts its legal entity from one business form to another business form under state or federal law to file an amendment to its current license to reflect the entity change, rather than file a new application in the name of a new entity. The franchise agreement that applied to the first business entity survives the conversion, and will apply to the successor entity. A franchised dealer who

changes its business entity using a method other than a conversion allowed under state or federal law must file a new application in the successor entity's name.

The amendments will prevent manufacturers or distributors from using a dealership's change of corporate form as a mechanism to require that dealer to sign a new franchise agreement with less favorable terms. Additionally, dealers seeking to convert their business entities will save time and money by avoiding the process involved in reapplying for a new license.

Supporters believe the adoption of the amendments will benefit the public by preventing manufacturers or distributors from using a dealership's change of corporate form to require dealers to sign new franchise agreements or make unwelcome changes to their dealerships in order to obtain the new franchise agreement in the new name. They stated that dealers seeking to convert their business entities will be able to save time and money by avoiding the process involved in reapplying for a new license.

Proponents of the rule reported that it was common for dealers to wait weeks or months for a manufacturer or distributor to process changes to franchise agreements to allow them to complete the corporate reformation process. They explained that the purpose of the rule was not to allow converted entities to avoid obtaining new franchise agreements in the new entity's name, but to expedite the licensing process. Proponents emphasized that the rule will allow the business entity change to occur without holding up the licensing process, or the dealership's ability to conduct business pending the change in corporate form.

Written comments in support of the amendments were received from the Texas Automobile Dealers Association (TADA), and William David Coffey III, attorney at law. The Board also heard oral comment in favor of the proposed amendments from Karen Coffey of TADA, and William R. Crocker, attorney at law. All comments received by the Board supported the amendments to 16 TAC §103.3.

The Board is authorized to adopt the proposed amendments and new rules by §3.06 of the Texas Motor Vehicle Commission Code, Article 4413(36) and (36a), Texas Revised Civil Statutes, which provides the Board with the authority to adopt rules necessary and convenient to effectuate the provisions of the Code and to govern practice and procedure before the agency.

§103.3. Amended License.

(a) To effectuate the Texas Motor Vehicle Commission Code, §4.02(d), every licensed dealer who proposes to conduct business under a franchise which is additional to or which differs from the franchise or franchises on which the license is then based shall file an application to amend the license on the form prescribed by the commission, attaching a copy of the franchise agreement. The amended application will be considered as if it were an original application to operate under the additional franchise as to all matters except those reflected by the license as issued.

(b) Every licensed dealer who proposes to sell and/or assign to another an interest equivalent to 10% or more in one or more franchises on which the license is then based or an equivalent interest in the business of the dealership, whether the same is a corporation, partnership, sole proprietorship, or otherwise, shall file an application to amend the license providing the requested information as to the proposed assignee. If the interest involved exceeds 50%, the amended license may be issued in the name of such assignee.

(c) In the event of a change in management reflected by a change of the general manager or other person who is in charge of a licensee's business activities, whether a managing partner, officer, or director of a corporation, or otherwise, the commission shall be advised by means of an application for an amended license.

(d) If a licensed new motor vehicle dealer changes or converts from one type of business entity to another without changing ownership of the dealership, the submission of a franchise agreement in the name of the new entity is not required in conjunction with an application. The franchise agreement on file with the Board prior to the change or conversion of the dealer's business entity applies to the successor entity until the parties agree to replace the franchise agreement.

(e) If a dealer adopts a plan of conversion under a state or federal law that allows one legal entity to be converted into another legal entity, only an application to amend the license is necessary to be filed with the Board. The franchise agreement on file with the Board continues to apply to the converted entity. If the entity change is accomplished by any means other than conversion, a new application is required, subject to subsection (d) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Brett Bray
Director
Texas Motor Vehicle Board
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For further information, please call: (512) 416-4899

CHAPTER 105. ADVERTISING

16 TAC §105.10

The Texas Motor Vehicle Board of the Texas Department of Transportation adopts amendments to 16 TAC §105.10(a), (c)(1), (c)(2) and(c)(3), as published in the March 1, 2002 issue of the *Texas Register* (27 TexReg 1421). Sections 105.10(c)(1), (c)(2), (c)(3) are adopted without changes. Section 105.10(a) is adopted with changes.

Explanation of Amendments.

Amendments to §105.10(c)(1), (c)(2) and (c)(3) correct typographical errors. The amendments to §105.10(c)(1) - (c)(3) change "sess price" to "sales price". Additional amendments to Figure §105.10(c)(2) correctly show that a rebate must be subtracted from the advertised price.

Section 105.10(a), as adopted by the Motor Vehicle Board, using "the price", rather than "a price" prohibits dealers from refusing to sell motor vehicles at the price advertised, and brings the Board's advertising rules into agreement with the Texas Finance Code and Federal Regulation Z, which prohibit adding negative equity to the cash price in a retail installment contract. Changes to the proposal make it clear that requiring dealers to sell vehicles at the price advertised does not prevent a higher price from being negotiated if a consumer chooses to purchase options that are not part of the advertised vehicle. The public benefit anticipated from the amendments will be stronger protection of the public and dealers from those dealers who engage in false, deceptive or misleading practices, as well as better understanding by licensees required to comply with the rules.

Prior to amendments in 2000, §105.10(a) read as follows: "The featured sale price of a new or used motor vehicle, when advertised, must be *the* price (italics added) for which the dealer is willing to sell the advertised vehicle to any retail buyer." After urging from the industry, the Board amended §105.10(a) and replaced "the" with the indefinite article "a". Shortly after the adoption consumers began complaining to the Motor Vehicle Division that automobile dealers were refusing to sell cars at the advertised price. Dealers would claim that the advertised vehicles were either no longer available, or that the price would have to be higher because of a consumer's personal or economic circumstances. Consequently, the Board determined that it would be in the citizenry's best interest to again amend §105.10(a) to address these problems.

The Motor Vehicle Board then proposed amending §105.10 (a) to read "the highest price." Recognizing industry concerns, alternative language was offered in the preamble of the proposal to make it clear that a dealer must be willing to sell a vehicle at the advertised price to any retail customer, and that negotiations that might raise or lower the advertised price are permissible. (27 TexReg 1421, March 1, 2002).

On April 25, 2002, the Motor Vehicle Board adopted amendments to §105.10(a), with changes to the proposed text. The effect of the changes is that the featured advertised price must be the price that any retail buyer can buy the advertised vehicle, and that the featured price of a vehicle does not include any additional costs that might be incurred if a customer decides to add options. In short, dealers may raise the price of a vehicle to accommodate the add-ons that consumers choose. Furthermore, the Board noted that the purpose of the amended rule is to protect consumers, and that nothing in the rule prevents a consumer from negotiating a lower price from the advertised price.

Summary of Comments.

No written or oral comments were received concerning the amendments to §105.10(c)(1), (c)(2) or (c)(3). Written comments in opposition the amendments to §105.10(a) were received from the Texas Automobile Dealers Association and Mr. William David Coffey, III, Attorney at Law. At the public hearing on April 25, 2002, comments in opposition were received from Ms. Karen Coffey of the Texas Automobile Dealers Association, Mr. Gene Brady of the Greater Houston Motorcycle Dealers Association, and Mr. William David Coffey, III, Attorney at Law. Commenting on the proposal was Ms. Leslie Pettijohn, Consumer Credit Commissioner. Introducing the rule and explaining staff support for the alternative language was Ms. Carol Kent, Motor Vehicle Division (MVD)Enforcement Director.

Opponents argued that replacing the indefinite article "a" with the definite article "the" would prevent dealerships and consumers from negotiating a higher price from the advertised price if the consumer wished to add options to a vehicle. They stated that the amendment amounted to over-regulation because current law already prohibits bait and switch advertising.

MVD staff explained that the proposed amendments would make §105.10(a) consistent with §105.6 that states that "All advertised statement shall be accurate, clear, and conspicuous." The proposal would not prevent a dealer and a consumer from negotiating a lower price from the advertised price, or a higher price from advertised price if the consumer chooses to add options. However, if the rule allowed dealers to advertise "a price", then dealers were free not to adhere to their advertisements when negotiating with consumers. Ms. Pettijohn explained that using "a price" would not prevent dealers from adding negative equity to the cash price in a retail installment contract, in violation of the Finance Code.

Reasons for Disagreement with Party Submissions or Proposals.

The Board concluded that because a dealer and consumer are free to negotiate a higher price if options are added, including the word "highest" in the amendment was unnecessary. The Board weighed the option of altogether eliminating §105.10(a); however, that course of action was rejected as not providing the consumers of the State adequate protection. The Board ultimately adopted language incorporating "the price" to address consumer concerns, as well as language to make it clear that requiring dealers to sell vehicles at the price advertised does not prevent a higher price from being negotiated if a consumer chooses to purchase options that are not part of the advertised vehicle.

Statutory Authority.

The Board is authorized to adopt the amendments by §3.06 of the Texas Motor Vehicle Commission Code, Article 4413(36) and (36a), Texas Revised Civil Statutes, which provides the Board with the authority to adopt rules necessary and convenient to effectuate the provisions of the Code and to govern practice and procedure before the agency.

§105.10. Dealer Price Advertising.

(a) When featuring an advertised sale price of a new or used motor vehicle, the dealer must be willing to sell the vehicle for such advertised price to any retail buyer. The advertised sale price shall be the price before the addition or subtraction of any other negotiated items. The only charges that may be excluded from the advertised price are:

(1) any registration, certificate of title, license fees, or an additional registration fee, if any, charged by a full service deputy as provided by County Road and Bridge Act, §4.202(g);

(2) any taxes; and

(3) any other fees or charges that are allowed or prescribed by law.

(b) A qualification may not be used when advertising the price of a vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer," or "with down payment."

(c) If a price advertisement discloses a rebate cash back or discount savings claim, the price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive.

(1) If an advertisement discloses a discount savings claim, this incentive must be disclosed as a deduction from the manufacturer's suggested retail price (MSRP). The following is an acceptable format for advertising a price with a discount savings claim.
Figure: 16 TAC §105.10(c)(1)

(2) If an advertisement discloses a rebate, this incentive must be disclosed as a deduction from the advertised price. The following is an acceptable format for advertising a price with a rebate.
Figure: 16 TAC §105.10(c)(2)

(3) If an advertisement discloses both a rebate and a discount savings claim, the incentives must be disclosed as a deduction from the manufacturer's suggested retail price (MSRP). The following is an acceptable format for advertising a price with a rebate and a discount savings claim.
Figure: 16 TAC §105.10(c)(3)

(d) In the event that the manufacturer offers a discount on a package of options then that discount should be disclosed above or prior to the manufacturer's suggested retail price (MSRP) with a total price of the vehicle before option discounts. The following is an acceptable format.
Figure: 16 TAC §105.10(d) (No change.)

(e) If a rebate is only available to a selected portion of the public and not the public as a whole, the price should be disclosed as in subsection (c) of this section first and then the nature of the limitation and the amount of the limited rebate may be disclosed. The following is an acceptable format.
Figure: 16 TAC §105.10(e) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 111. GENERAL DISTINGUISHING NUMBERS

16 TAC §111.2, §111.19

The Texas Motor Vehicle Board of the Texas Department of Transportation adopts amendments to 16 TAC §111.2 and new §111.19, as published in the April 12, 2002, issue of the *Texas Register* (27 TexReg 2917). Section 111.2 and §111.19 are adopted without changes and will not be republished.

Explanation of Amendments

On May 16, 1996, the Motor Vehicle Board issued a Policy Statement concerning license purveyors. The Board found that individuals, who for a fee, purport to assist applicants in the application or renewal process, are an unreasonable, and frequently costly, barrier between the agency and the individual applicant. The Board found that this obstacle between the agency and the applicant is not in the best interest of the licensee body or the consuming public. Frequently these purveyors make unwarranted promises to both worthy and unworthy applicants, charging onerous fees for services that the agency itself is well prepared, and in fact is mandated, to provide to new applicants and renewing licensees.

In the Policy Statement, the Board recognized that licensed attorneys, certified public accountants, and those individuals acting without remuneration, are not an impediment to the licensing process, and therefore should not be included in the definition of license purveyor. Furthermore, the Board found that it is necessary to impose certain restrictions on the application process that will serve to undermine purveying. To wit, the Board determined that license applications and renewals shall only be filed by the applicant, the applicant's attorney, or the applicant's certified public accountant. Additionally, the Board determined that application and renewal fees, if not paid in cash, should be drawn from an account held by the applicant, or from a trust account of the applicant's designated attorney or certified public accountant. Finally, the Board determined that information concerning an application, application deficiencies, or new license numbers will not be provided telephonically to license purveyors, and that to this end, attorneys and certified public accountants may be required to provide proof of authority to act on behalf of an applicant.

In consideration of the foregoing and in recognition of a need to set in motion the effective enforcement of its policy, the Board has formalized its policy by adopting the amendment and new section. The new section will be enforced pursuant to the sanctioning provisions of §4.06 of the Texas Motor Vehicle Commission Code (TEX. REV. CIV. STAT. ANN. art. 4413(36)). The public will benefit from better oversight of a more expedient licensing process and the elimination of fraudulent and meritless applications.

Summary of Comments

No written comments were received regarding the adoption of amendments to §111.2 and new §111.19. No oral comments were received at the public hearing on June 13, 2002.

Statutory Authority

The Board is authorized to adopt the amendment and new rule by §3.06 of the Texas Motor Vehicle Commission Code, Article 4413(36) and (36a), Texas Revised Civil Statutes, which provide the Board with the authority to adopt rules necessary and convenient to effectuate the provisions of the Code and to govern practice and procedure before the agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203944
Brett Bray
Director
Texas Motor Vehicle Board
Effective date: July 14, 2002
Proposal publication date: April 12, 2002
For further information, please call: (512) 416-4899

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 53. REGIONAL EDUCATION SERVICE CENTERS

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §53.1002

The Texas Education Agency (TEA) adopts new §53.1002, concerning charter school representation on board of directors, with changes to the proposed text as published in the March 22, 2002, issue of the *Texas Register* (27 TexReg 2177). The new section is adopted to incorporate new provisions to conform to changes enacted by House Bill (HB) 6, 77th Texas Legislature, 2001.

HB 6, 77th Texas Legislature, 2001, directed the commissioner to adopt rules for a wide range of issues related to open-enrollment charter schools. HB 6 included an amendment to Texas Education Code (TEC), §12.104, to provide for representation of open-enrollment charter schools on the boards of directors of regional educational service centers.

The new section establishes provisions relating to a representative of the open-enrollment charter schools in a region to serve as a non-voting member of the board of directors of that regional education service center. The new rule specifies details regarding the charter school member, term of office, and appointment process.

In response to comments, the following changes have been made to the section since published as proposed.

Language was revised in subsection (a) to conform with *Texas Register* style and format requirements.

Language was added in subsection (a) to provide that the commissioner shall appoint a charter school representative when at least one open-enrollment charter school, as defined by 19 TAC §100.1011(3), is approved to begin operating during the term to be served by the charter school representative.

Language was also added in subsection (a) to indicate that at least one charter school must operate within the boundary of a regional education service center (RESC) on or after June 1 in order to require charter school representation on the RESC board of directors.

Language was added as new subsection (d) to include transitional time frames to provide charter school representation for the 2002-2003 school year.

The following comments were received regarding adoption of the new section.

Comment. A representative of the Texas Classroom Teachers Association asked the commissioner to make classroom teachers required members of regional education service center (RESC) boards in the same way that charter school members are becoming required members of the board.

Agency Response. The agency disagrees with the comment. Texas Education Code (TEC), §12.104(c), provides that the commissioner "shall adopt rules that provide for the representation of open- enrollment charter schools on the boards of directors of regional education service centers." There is no similar provision respecting classroom teachers on the boards of directors of regional education service centers.

Comment. A representative of the Texas Charter School Resource Center asked if the deadline for this year could be extended so that charter schools can have representation in the 2002-2003 school year.

Agency Response. The agency agrees with the comment and has modified the section to include transitional time frames permitting charter schools to have representation for the 2002-2003 school year.

Comment. A representative from an education service center asked if the commissioner will appoint a charter school representative to the RESC board when a charter has been approved to operate in the RESC boundaries, but is not yet operational, or will a representative only be appointed after a charter school is operational in the region.

Agency Response. The agency agrees with the comment and has modified the section to provide that the commissioner shall appoint a charter school representative when an open-enrollment charter school, as defined by 19 TAC §100.1011(3), is approved to begin operating during the term to be served by the charter school representative.

Comment. Relating to proposed §53.1002(c)(1), a representative from an education service center asked about the commissioner's options for appointing a charter school representative to the RESC board if applicants for a charter appointment are poorly qualified.

Agency Response. The agency disagrees with the comment. Proposed §53.1002(c)(1) requires that a charter school member of an RESC board of directors be a United States citizen, a resident of the State of Texas, and at least 18 years of age. By comparison, existing §53.1001(b)(1) provides that a traditional member of an RESC board of directors "must be a United States citizen, at least 18 years of age, and a resident of that education service center region. He or she may not be engaged professionally in education or be a member of a board of any educational agency or institution." The proposed §53.1002(c)(1) permits, but does not require, persons with specialized skill or knowledge in the field of education to serve as a charter school representative.

Comment. Relating to §53.1002(c)(1), a representative from an education service center asked about the procedures to follow if no charter school in the region desired representation on the RESC board.

Agency Response. Section 53.1002(c)(1) requires that a charter school member of an RESC board of directors be appointed where an RESC has at least one open-enrollment charter school approved to operate within its boundaries. TEC, §12.104(c), requires that all open-enrollment charter schools receive the same level of services from their RESC as is provided to school districts in the region. The desire of the charter school is not a statutory factor to be considered.

The new section is adopted under the Texas Education Code (TEC), §12.104, which authorizes the commissioner of education to adopt rules that provide for the representation of open-enrollment charter schools on the boards of directors of regional education service centers.

§53.1002. Charter School Representation on Board of Directors.

(a) Charter school member. Notwithstanding the provisions of §53.1001 of this title (relating to Board of Directors), where a regional education service center (RESC) has at least one open- enrollment charter school, as defined by §100.1011(3) of this title (relating to Definitions), approved to operate within its boundaries on or after June 1, the commissioner of education shall appoint a representative of the open-enrollment charter schools in the region to serve as a non-voting member of the board of directors of that RESC as provided by this section.

(b) Term of office.

(1) A charter school member of an RESC board of directors shall be appointed for a one-year term. The term of office shall begin June 1, and may be extended for up to three years by the commissioner.

(2) If a vacancy occurs due to death or resignation of a charter school member of an RESC board of directors, a 30-day period shall elapse, after notice has been given to the board chair, before the vacancy is filled.

(3) At the beginning of the 30-day period, notice of any vacancy shall be given to the president of the governing body and the chief executive officer of each open-enrollment charter school in the education service center region and shall be posted in appropriate locations.

(4) A vacancy for the unexpired term of a charter school member of an RESC board of directors shall be filled by appointment by the commissioner of education.

(c) Appointment process.

(1) A charter school member of an RESC board of directors must be a United States citizen and a resident of the State of Texas, and must be at least 18 years of age. A person may be appointed to serve as a charter school member of more than one RESC board of directors.

(2) Any eligible person wishing to seek appointment as a charter school member of an RESC board of directors shall file an application between February 1 and February 20. The application shall be in the form of a letter seeking appointment to a specific RESC board of directors. The letter must:

(A) include a description of the applicant's qualifications to serve as a charter member of the RESC board of directors;

(B) enclose letters of support signed by representatives from at least one open- enrollment charter school in the education service center region; and

(C) supply contact information for the persons signing the letters of support.

(3) The application for appointment as a charter school member of an RESC board of directors may be filed by mail if sent by certified United States mail, return receipt requested, or by an overnight courier service. The envelope must be addressed to the Charter School Division, Texas Education Agency, 1701 N. Congress Avenue, Austin, Texas 78701-1494.

(4) Not later than May 31, the commissioner of education shall notify the board of directors of each qualifying RESC of the commissioner's appointee to serve as the charter school member of that RESC board of directors effective June 1.

(d) Transition period deadlines. Notwithstanding anything in this section, the following provisions shall govern where a charter school member of an RESC board of directors is appointed to a term of office that includes any of the period from June 1, 2002, through May 31, 2003:

(1) Any eligible person wishing to seek appointment as a charter school member of an RESC board of directors shall file an application during a period commencing on the tenth day following the effective date of this section and ending on the 30th day following the effective date of this section. The application shall be filed in accordance with the process specified in subsection (c) of this section.

(2) Not later than the 90th day following the effective date of this section, the commissioner of education shall notify the board of directors of each qualifying RESC of the commissioner's appointee to serve as the charter school member of that RESC board of directors.

(3) The term of office of a charter school member of an RESC board of directors appointed under this subsection shall begin on the day the commissioner of education notifies the board of directors of the qualifying RESC of the commissioner's appointee to serve as the charter school member of that RESC board of directors and shall expire May 31, 2003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 18, 2002.

TRD-200203828
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Effective date: July 8, 2002
Proposal publication date: March 22, 2002
For further information, please call: (512) 463-9701

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING COUNSELING PUBLIC SCHOOL STUDENTS

19 TAC §61.1071

The Texas Education Agency (TEA) adopts new §61.1071, concerning counseling public school students regarding higher education, with changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3418). The new section incorporates the new requirement that the commissioner adopt rules regarding the provision of counseling about higher education to first-year, and then again senior-year, high school students or high school level open-enrollment charter school students, beginning with the 2002-2003 school year, in accordance with Senate Bill (SB) 158, 77th Texas Legislature, 2001.

TEC, Chapter 33, Service Programs and Extracurricular Activities, Subchapter A, School Counselors and Counseling Programs, was amended by SB 158, 77th Texas Legislature, 2001, to add §33.007, Counseling Regarding Higher Education. This new section includes the requirement that counselors provide information about higher education to students (and students' parents or guardians) during the first and senior years of high school enrollment. The information must include information regarding the importance of higher education; the advantages of completing the recommended or advanced high school program; the disadvantages of taking courses to prepare for a high school equivalency examination relative to the benefits of taking courses leading to a high school diploma; financial aid eligibility; instruction on how to apply for federal financial aid; the center for financial aid information established under TEC, §61.0776; the automatic admission of certain students to general academic teaching institutions as provided by TEC, §51.803; and the requirements for the TEXAS Grant program. TEC, §33.007, as added by SB 158, 77th Texas Legislature, 2001, requires the commissioner to adopt rules regarding the provision of counseling regarding higher education required by §33.007(b).

In response to comments, the following changes have been made to 19 TAC §61.1071 since published as proposed.

Language in subsection (b)(4)(B) was revised to clarify information about financial aid eligibility.

Language in subsection (b)(8)(D) was revised to require only district certification of a student's completion of the recommended or higher curriculum.

The following comments were received regarding adoption of the new section.

General Comments

Comment. A school counseling coordinator at Texas A&M University commented that the language in the proposed rule seemed appropriate, detailed enough to provide direction, and sufficiently comprehensive to reflect the intent of the law and to serve students. This individual also commented that the proposed rules did not address the responsibilities of elementary, middle, or junior high school counselors.

Agency response. The agency, in general, agrees with this comment. However, modifications have been made to the rules as a result of public comment. Additionally, as specified in the Texas Education Code (TEC), the commissioner's rulemaking authority only extends to TEC, §33.007(b), and does not include the provisions in TEC, §33.007(a), concerning elementary, middle, or junior high school counselors.

Comment. A coordinator of school counseling programs at Amberton University commented that the language in the proposed rule packet should help counselors organize and plan to effectively assist high school students in planning and transitioning into higher education programs.

Agency response. The agency, in general, agrees with this comment. However, modifications have been made to the rules as a result of public comment.

§61.1071(b)(4)(B)

Comment. The Texas Association of School Boards (TASB) expressed concerns that this section of the proposed rule would open a forum wherein districts must provide information from any and all organizations that provide financial aid. TASB further commented that the proposed rule might impact local public school districts' distribution of literature policies which vary across the state. TASB suggested that this section be deleted or amended to address this concern.

Agency response. The agency agrees that this is an important issue; the rules were developed with the intent of providing flexibility and support to local school districts. The agency has modified the section to clarify the intended flexibility.

§61.1071(b)(8)(D)

Comment. The Texas Counseling Association (TCA) commented that the language in the proposed rule provides guidance and specificity regarding the information counselors are to share with students, parents, and guardians. TCA also commented that the rules will help prioritize when students are to receive the information and ensure that all students receive consistent information about postsecondary opportunities, regardless of the district in which the student resides. However, TCA also expressed concern about counselors needing to certify a student's completion of coursework and suggested that the word "counselor" be deleted from this section.

Agency response. The agency agrees with this comment and has modified the section to reflect this change.

The new section is adopted under the Texas Education Code (TEC), §33.007, as added by Senate Bill 158, 77th Texas Legislature, 2001, which authorizes the commissioner to adopt rules regarding the provision of counseling regarding higher education as required by §33.007(b) to high school students or open-enrollment charter school students other than those for whom the 2001-2002 school year is the first or senior year of high school.

§61.1071. Counseling Public School Students Regarding Higher Education.

(a) In accordance with Texas Education Code (TEC), §33.007, a counselor shall provide certain information about higher education to a student and a student's parent or guardian during the first year the student is enrolled in a high school or at the high school level in an open-enrollment charter school and again during the student's senior year.

(b) The information that counselors provide in accordance with subsection (a) of this section must include information regarding all of the following:

(1) the importance of higher education, which:

(A) includes workforce education, liberal arts studies, science education, graduate education, and professional education to provide broad educational opportunities for all students;

(B) furthers students' intellectual and academic development; and

(C) offers students more career choices and a greater potential earning power;

(2) the advantages of completing the recommended high school curriculum or higher, including, at a minimum, curriculum programs which:

(A) provide students with opportunities to complete higher-level course work, particularly in mathematics, science, social studies, and languages other than English, thereby:

(i) increasing students' readiness for higher education and reducing the need for additional preparation for college-level work;

(ii) preparing students for additional advanced work and research in both career and educational settings;

(iii) allowing students, in certain instances, to receive college credit for their high school course work; and

(iv) enabling students to be eligible for certain financial aid programs for which they would otherwise be ineligible (e.g., the TEXAS grant program);

(B) enable students to receive an academic achievement record noting the completion of either the recommended program or higher; and

(C) provide students who elect to complete the distinguished achievement program with an opportunity to demonstrate student performance at the college or career level by demonstrating certain advanced measures of achievement;

(3) the advantages of taking courses leading to a high school diploma relative to the disadvantages of preparing for a high school equivalency examination, including:

(A) the progressive relationship between education and income; and

(B) the greater possibility for post-secondary opportunities (including higher education and military service) that are available to students with a high school diploma;

(4) financial aid eligibility, including;

(A) the types of available aid, not limited to need-based aid, and including grants, scholarships, loans, tuition and/or fee exemptions, and work-study;

(B) the types of organizations that offer financial aid, such as federal and state government, civic or church groups, foundations, nonprofit organizations, parents' employers, and institutions of higher education; and

(C) the importance of meeting financial aid deadlines;

(5) instruction on how to apply for financial aid, including guidance and assistance in:

(A) determining when is the most appropriate time to complete financial aid forms; and

(B) completing and submitting the Free Application for Federal Student Aid (FAFSA) or any new version of this form as adopted by the U.S. Department of Education;

(6) the Texas Higher Education Coordinating Board's Center for Financial Aid Information, including its toll-free telephone line, its Internet website address, and the various publications available to students and their parents;

(7) the Automatic Admissions policy, which provides certain students who graduate in the top 10% of their high school class with automatic admission into Texas public universities; and

(8) the general eligibility and academic performance requirements for the TEXAS grant program, which allows students meeting the academic standards set by their college or university to receive awards for up to 150 credit hours or for six years or until they receive their bachelor's degree, whichever occurs first. The specific eligibility and academic performance requirements, along with certain exemptions to these requirements, are specified in Chapter 22, Subchapter L, of this title (relating to Toward Excellence, Access and Success (TEXAS) Grant Program). The general requirements include:

(A) Texas residency;

(B) financial need;

(C) registration for the Selective Service or exemption from this requirement;

(D) completion of the recommended high school program or higher or, in the case of a public high school that did not offer all of the courses necessary to complete the recommended or higher curriculum, a certification from the district that certifies that the student completed all courses toward such a curriculum that the high school had to offer;

(E) enrollment of at least three-quarters time in an undergraduate degree or certificate program within 16 months of high school graduation, unless an allowable exemption is satisfied; and

(F) no conviction of a felony or crime involving a controlled substance, unless certain conditions are met.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203941

Cristina De La Fuente-Valadez
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Texas Education Agency
Effective date: July 14, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

CHAPTER 51 PRACTICE AND PROCEDURE

SUBCHAPTER D. BARBER SHOPS

22 TAC §51.93

The Texas State Board of Barber Examiners adopts new §51.93, concerning Sanitation Rules for Barber Shops, Schools and Colleges without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3421) and will not be republished. The new rule is pursuant to Senate Bill 660, 77th Texas Legislature, Regular Session, and sets forth the criteria governing sanitary conditions of barber shops, barber schools and colleges.

Public comment was received from Nancy King, Director, Association of Electric File Manufacturers. She suggested that all tools and implements that come in direct contract with a patron must be disinfected by total immersion in an EPA disinfectant and that an ultraviolet cabinet is not an accepted method of disinfection. The Board noted that a germicidal ultraviolet light is mentioned in the rule but that an ultraviolet cabinet is not mentioned in the rule; further, the germicidal ultraviolet light that is mentioned in the rule is in addition to an EPA-approved disinfectant, germicide, or bactericide. Further, the Board noted that total immersion would be inappropriate for some barbering tools, e.g., clippers. Accordingly, the Board adopted the proposed rule without the suggestions from Nancy King.

The new rule is adopted under the Texas Occupations Code, Chapter 1601, §1601.152, which directs the board to adopt reasonable rules on sanitation for the operation of barber shops, specialty shops, and barber schools, and Chapter 1601, §1601.151, which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this new rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203919

Douglas A. Beran, Ph.D.
Executive Director
Texas State Board of Barber Examiners
Effective date: July 11, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 458-1091

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SUBCHAPTER G. PERSONNEL--QUALIFICATIONS AND DUTIES

22 TAC §51.121

The Texas State Board of Barber Examiners adopts an amendment to §51.121, concerning Barber Inspector without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3422) and will not be republished. The amendment provides that an applicant for the position of barber inspector must be a licensed barber and must have practiced barbering for at least three (rather than five) years immediately prior to applying for the position of barber inspector.

The amendment is adopted under the Texas Occupations Code, §§1601.101 and 1601.104, and 1601.151 which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203920
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Effective date: July 11, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 458-1091

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SUBCHAPTER H. INFORMAL HEARING DISPOSITION

22 TAC §51.131

The Texas State Board of Barber Examiners adopts amendments to §51.131, concerning Informal Disposition without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3423) and will not be republished. The proposed amendments are pursuant to the Texas Occupations Code, §1601.706. The amendments rename §51.131 Informal Disposition as Administrative Procedures Regarding Disciplinary Actions Against Licensees and adds a subsection (b) such that the Executive Director may sign a Board Order once a Proposal for Decision has been ratified by the Board.

The amendments are adopted under the Texas Occupations Code, Chapter 1601, §1601.706 and the Texas Occupations Code, §1601.151 which vest the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200203921
Douglas A. Beran, Ph.D.
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Texas State Board of Barber Examiners
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Proposal publication date: April 26, 2002
For further information, please call: (512) 458-1091

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SUBCHAPTER I. DEFINITIONS

22 TAC §51.141

The Texas State Board of Barber Examiners adopts amendments to §51.141, concerning Definitions without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3424) and will not be republished. The amendments provide that (1) the use of any blade, drill, or cutting tool for the purpose of removing corns or calluses is considered a medical practice and is prohibited and that (2) the use of any drill or similar tool designed for use by a manicurist or pedicurist is prohibited without proof of certification of training of that manicurist or pedicurist through a program approved by the Texas State Board of Barber Examiners.

Public comment was received from Nancy King, Director, Association of Electric File Manufacturers. Mrs. King's comments were responses to questions asked by board staff and did not pertain to the substance of the rule. Accordingly, the board adopted the amendments without changes.

The amendments are adopted under the Texas Occupations Code, §1601.151 which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203922
Douglas A. Beran, Ph.D.
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Texas State Board of Barber Examiners
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Proposal publication date: April 26, 2002
For further information, please call: (512) 458-1091

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.38

The Texas State Board of Examiners of Psychologists adopts amendments to §465.38, concerning Psychological Services in the Schools, without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3427).

The amendments are being adopted in order to clarify that non-LSSPs may not perform contracted school psychological services.

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203848
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 9, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 305-7700

CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.8

The Texas State Board of Examiners of Psychologists adopts amendments to §470.8, concerning Informal Disposition of Complaints, without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3428).

The amendments are being adopted in order to clarify that the Disciplinary Review Panel cannot issue a default judgment against a licensee who does not appear at an informal conference and to make clear that informal conferences will occur in executive session in order to preserve the confidentiality of the ongoing investigation.

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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-200203849
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 9, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 305-7700

22 TAC §470.11

The Texas State Board of Examiners of Psychologists adopts new Board rule §470.11, concerning Service in Non-rulemaking Proceedings, without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3428).

The new rule is being adopted in order to clarify the appropriate form of service upon parties in contested case proceedings.

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203850

Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 9, 2002
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For further information, please call: (512) 305-7700

22 TAC §470.18

The Texas State Board of Examiners of Psychologists adopts new Board rule §470.18, concerning The Record, without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3429).

The new rule is being adopted in order to clarify what the Board may appropriately consider in terms of evidence when hearing a contested case. The rule conforms to the requirements of the Administrative Procedure Act (Chapter 2001, Texas Government Code).

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203851
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 9, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 305-7700

22 TAC §470.20

The Texas State Board of Examiners of Psychologists adopts new Board rule §470.20, concerning Computation of Time, without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3429).

The new rule is being adopted in order to clarify how time is computed for purposes of deadlines which exist in the rest of Chapter 470, as well as other deadlines established by the State Office of Administrative Hearings and for proceedings under Chapter 2001 of the Texas Government Code (the Administrative Procedure Act).

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 9, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 305-7700

22 TAC §470.21

The Texas State Board of Examiners of Psychologists adopts amendments to §470.21, concerning Disciplinary Guidelines, without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3430).

The amendments are being adopted in order to clarify that reprimands are not for specific periods of time, but are a one-time disciplinary action against a license.

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203853
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 9, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 305-7700

CHAPTER 473. FEES

22 TAC §473.1, §473.2

The Texas State Board of Examiners of Psychologists adopts amendments to §473.1, concerning Application Fees (Not Refundable), and §473.2, concerning Examination Fees (Not Refundable) without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3430).

The amendments are being adopted in order to fulfill requirements of contingent revenue for Fiscal Year 2002-2003 appropriations for the Board. The amendments were previously adopted on an emergency basis to enable the agency to comply with House Bill 604 mandating an internal audit of the agency by the 77th Legislature.

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203854
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 9, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 305-7700

22 TAC §473.3

The Texas State Board of Examiners of Psychologists adopts the repeal of §473.3, concerning Annual Renewal Fees (Not Refundable), without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3431).

The repeal is being adopted in order to clarify fee changes in new Board rule §473.3.

The adopted repeal will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203855
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 1, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 305-7700

22 TAC §473.3

The Texas State Board of Examiners of Psychologists adopts new Board rule §473.3, concerning Annual Renewal Fees (Not Refundable), with changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3431).

The new rule is being adopted in order to comply with Texas Online fee determinations authorized by Senate Bill 187 and House Bill 645 passed by the 77th Legislature requiring on-line renewals and profiles of licensed psychologists. The effective date will be September 1, 2002.

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§473.3. Annual Renewal Fees (Not Refundable).

(a) Psychological Associate Licensure - $90

(b) Psychological Associate Licensure over the age of 70 - $15

(c) Provisionally Licensed Psychologist - $85

(d) Provisionally Licensed Psychologist over the age of 70 - $15

(e) Psychologist Licensure - $180

(f) Psychologist Licensure over the age of 70 - $15

(g) Psychologist with Health Service Provider Status - $20

(h) Psychologist with Health Service Provider status over the age of 70 - No Fee

(i) Licensed Specialist in School Psychology - $33

(j) Licensed Specialist in School Psychology over the age of 70 - $13

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203856

Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 1, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 305-7700

22 TAC §473.4

The Texas State Board of Examiners of Psychologists adopts amendments to §473.4, concerning Late Fees for Renewals (not Refundable), without changes to the proposed text as published in the April 26, 2002, issue of the *Texas Register* (27 TexReg 3432).

The amendments are being adopted in order to comply with Texas Online fee determinations authorized by Senate Bill 187 and House Bill 645 passed by the 77th Legislature requiring on-line renewals and profiles of licensed psychologists. The effective date will be September 1, 2002.

The adopted rule will make the rules easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203857
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 1, 2002
Proposal publication date: April 26, 2002
For further information, please call: (512) 305-7700

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING
SUBCHAPTER A. EXAMINATION

22 TAC §571.3

The Texas Board of Veterinary Medical Examiners adopts amendments to §571.3 concerning Eligibility for Examination and Licensure without change to the proposed text as published in the *Texas Register* on March 15, 2002 (27 TexReg 1974). The amendments update the name of the organization responsible for administering the national veterinary licensing examination; increase the passing score on the state licensing examination from 75 percent to 85 percent; and require that graduates of veterinary schools not accredited by the Board take and pass an English proficiency test prior to sitting for the national examination. The new passing grade requirement will require more diligence of veterinarians who wish to practice in Texas and helps to enhance the knowledge and professionalism of Texas veterinarians. A required English proficiency test will allow the national examination process to be more efficient by ensuring that the examination does not need to be repeated because of a failure to comprehend basic English.

No comments were received concerning this section.

The amended section is adopted under the authority of the Texas Occupations Code, §801.151 (a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203781
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: July 7, 2002
Proposal publication date: March 15, 2002
For further information, please call: (512) 305-7555

22 TAC §571.4

The Texas Board of Veterinary Medical Examiners adopts amendments to §571.4 concerning Special Licenses without change to the proposed text as published in the *Texas Register* on March 15, 2002 (27 TexReg 1975).

Special licenses may be issued to members of the staff of the Texas A&M Veterinary Medical School and veterinary employees of the Texas Animal Health Commission and the Texas Veterinary Medical Diagnostic Laboratory, and to licensed veterinarians in other states whose specialty practices are unrepresented or under represented in Texas.

The amendment will raise the passing examination grade from 75 to 85 percent. This requirement will demand more diligence of veterinarians who wish to practice in Texas and help to enhance the knowledge and professionalism of Texas veterinarians.

No comments were received concerning this section.

The amended section is adopted under the authority of the Texas Occupations Code, §801.151 (a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203782

Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: July 7, 2002
Proposal publication date: March 15, 2002
For further information, please call: (512) 305-7555

22 TAC §571.18

The Texas Board of Veterinary Medical Examiners adopts amendments to §571.18 concerning Provisional License without change to the proposed text as published in the *Texas Register* on March 15, 2002 (27 TexReg 1976).

Provisional licenses are issued to applicants for regular licensure who want to practice prior to taking the regular examination on its regularly scheduled date. The amendment will raise the passing examination grade from 75 to 85 percent. This requirement will require more diligence of veterinarians who wish to practice in Texas and helps to enhance the knowledge and professionalism of Texas veterinarians.

No comments were received concerning this section.

The amended section is adopted under the authority of the Texas Occupations Code, §801.151 (a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203783
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: July 7, 2002
Proposal publication date: March 15, 2002
For further information, please call: (512) 305-7555

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §573.11

The Texas Board of Veterinary Medical Examiners adopts amendments to §573.11 concerning Responsibility for Unlicensed and Licensed Employees without change to the proposed text as published in the *Texas Register* on March 15, 2002 (27 TexReg 1976).

This section amends the previous section which required that veterinarians be responsible only for the unauthorized practice of veterinary medicine by unlicensed persons in the veterinarian's employ. Because the Board has found several cases where licensed veterinarians have been employed despite their not having other necessary credentials, such as Texas Department of Public Safety and Drug Enforcement Administration certifications for handling controlled substances, the section is expanded to include a new responsibility of the employing or supervising veterinarian to ensure that the employee veterinarian is properly credentialed in all aspects. This amendment will increase the confidence of the public that veterinarians, including employers, supervisors, and employees, are maintaining proper licenses and certificates.

One comment was received concerning this section. Mr. Ellis Gilleland stated that the revised section creates a "loophole" which allows unlicensed veterinary technicians to engage in the practice of veterinary medicine. The Board disagrees with this statement. The section as revised still holds a veterinarian responsible for the acts of unlicensed technicians working in his employment or under his supervision. Unlicensed persons themselves are also liable for any acts that constitute the practice of veterinary medicine under other provisions of the Veterinary Licensing Act and the rules of the Board.

The amended section is adopted under the authority of the Texas Occupations Code, §801.151 (a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203785
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: July 7, 2002
Proposal publication date: March 15, 2002
For further information, please call: (512) 305-7555

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.64

The Texas Board of Veterinary Medical Examiners adopts amendments to §573.64 concerning Continuing Education Requirements with a change to the proposed text as published in the *Texas Register* on March 29, 2002 (27 TexReg 2398).

The amendments were proposed to update the requirements for continuing education (CE) for veterinarians to require two additional hours of CE and expand the methods by which CE can be acquired by acknowledging the increasing availability of electronic methods of delivery. The veterinarian will benefit by being able to choose among several methods of acquiring CE, including on-line presentations, audio tapes, video tapes, and other approved methods. By increasing the number of required CE hours from 15 to 17 annually, the Board encourages veterinarians to increase their knowledge of this constantly changing profession and thus promote public confidence in the profession.

The Board received a comment from Lois M. Marshman, D.V.M., who indicated that requiring two extra CE hours will cause a financial hardship for those veterinarians who must bear the increasing cost of additional hours. The Board believes that the two additional hours can be acquired by the average veterinarian without incurring a significant financial hardship in light of the expanded universe of CE delivery systems proposed in this

section. No change will be made in the section based on this comment.

Another comment was received from Mr. Ellis Gilleland who opposed any provision allowing veterinarians to acquire CE by listening to audio tapes or viewing video devices or participating in on-line programs because such CE participation cannot be verified. The Board disagrees with this statement and notes that such CE hours are limited to five hours for tapes and seven hours for on-line programs. The Board notes that on-line CE participation is verifiable because two-way participation is usually required and recorded by the on-line provider. The Board feels that allowing five hours of CE by listening to or viewing tapes without requiring independent verification does not threaten the integrity of the profession. No change will be made in this section based on this comment.

One change is made in subsection (a)(1)(B) of the section which clarifies the effective date of the new hours requirement and corrects the dates in the example for hours that can be carried over from year to year.

The amended section is adopted under the authority of the Texas Occupations Code, §801.151 (a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

§573.64. Continuing Education Requirements.

(a) Requirements

(1) Seventeen (17) hours of acceptable continuing education shall be required annually for renewal of all types of Texas licenses except as provided in subsection (e) of this section. Licensees who successfully complete the Texas State Board Licensing Examination shall be allowed to substitute the examination for the continuing education requirements of their examination period.

(A) A licensee shall obtain the required 17 hours of acceptable continuing education during the calendar year immediately preceding the licensee's application for license renewal. Should a licensee obtain acceptable continuing education hours during the year in excess of the required 17 hours, the licensee may carry over and apply the excess hours to the requirement for the next year. A maximum of 17 hours may be carried over each year.

(B) Effective Date. Seventeen hours of continuing education shall be required in 2003 for license renewal in 2004. Beginning with the continuing education requirement for license renewal in 2004, licensees may carry over acceptable continuing education hours pursuant to subsection (a)(1)(A) of this section. For example, acceptable continuing education hours obtained in 2003 which are in excess of the 17 hours required for renewal in 2004, may be carried over and applied to the continuing education requirement for renewal in 2005, subject to the provisions of subsection (a)(1)(A).

(2) Hardship extensions may be granted by appeal to the Executive Director of the Board. The executive director shall only consider requests for a hardship extension from licensees who were prevented from completing the required continuing education hours due to circumstances beyond the licensee's control. Requests for a hardship extension must be received in the Board offices by December 15. Should such extension be granted, thirty-four (34) hours of continuing education shall be obtained in the two-year period of time that includes the year of insufficiency and the year of extension. Licensees receiving a hardship extension shall maintain records of the thirty-four (34) hours of continuing education obtained and shall file copies of these records with the Board by attaching the records to the license renewal application submitted following the extension year.

(b) Proof of Continuing Education. The licensee shall sign a statement on the license renewal form attesting to the fact that the required continuing education hours have been obtained. The licensee shall maintain records which support the signed statement. Such records may include continuing education certificates, attendance records signed by the presenter, and/or receipts for meeting registration fees. These documents must be maintained for the last three (3) complete renewal cycles and shall be available at the practice location for inspection to Board investigators upon request.

(c) Acceptable Continuing Education.

(1) Acceptable continuing education hours shall be hours earned by:

(A) attending meetings sponsored or co-sponsored by the American Veterinary Medical Association (AVMA), AVMA's affiliated state veterinary medical associations and/or their continuing education organizations, AVMA recognized specialty groups, regional veterinary medical associations, local veterinary medical associations, and veterinary medical colleges;

(B) taking correspondence courses;

(C) listening to audio tapes or CD's, or viewing video tapes or other devices that transmit a video image, or by participating in other telecommunications discussions;

(D) participating in on-line courses and discussions; or

(E) any other methods approved by the Executive Director and a veterinarian Board member appointed by the Board President, or approved by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards.

(2) The Board shall accept continuing education hours obtained as a requirement of disciplinary action.

(d) Distribution of Continuing Education Hours.

(1) Of the required seventeen (17) hours of continuing education, no more than five (5) hours may be derived from either:

(A) correspondence courses; or

(B) practice management courses.

(2) Hours claimed for listening to audio and viewing video devices or participating in telecommunications presentations shall be limited to no more than five (5) hours.

(3) Interactive on-line hours that are verifiable may be claimed without limitation up to seven (7) hours.

(e) Exemption from Continuing Education Requirements. A licensee is not required to obtain or report continuing education hours, provided that the licensee submits to the Board sufficient proof that during the preceding year the licensee was:

(1) in retired status,

(2) a veterinary intern or resident, or

(3) out-of-country on charitable or special government assignments for at least 9 months or

(4) on inactive status. Licensees on inactive status may voluntarily acquire continuing education for purposes of reinstating his/her license to regular status.

(f) Disciplinary Action for Non-Compliance. Failure to complete the required hours without obtaining a hardship extension from the executive director, failure to maintain required records, falsifying

records, or intentionally misrepresenting programs for continuing education credit shall be grounds for disciplinary action by the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203784
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: July 7, 2002
Proposal publication date: March 29, 2002
For further information, please call: (512) 305-7555

TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 14. COUNTY INDIGENT HEALTH CARE PROGRAM

The Texas Department of Health (department) adopts amendments to §§14.1, 14.101, 14.104, 14.105, 14.201, and 14.204 concerning the County Indigent Health Care Program (CIHCP). The sections are adopted without changes to the proposed text as published in the April 5, 2002 issue of the *Texas Register* (27 TexReg 2697) and will not be republished.

The rules comply with Health and Safety Code, Chapter 61, which requires that the standards and procedures used to determine eligibility must be consistent with the Temporary Assistance for Needy Families (TANF) and Medicaid standards and procedures.

To comply with state law, §14.1 clarifies the distribution of state assistance funds to eligible counties to increase access to the appropriate funding source of Medicaid. Also, minor clarifications were made which include a word change and a spelling correction.

The amendment to §14.101 is consistent with TANF and makes minor changes and clarifications regarding a complete application including the names of all other household members.

The amendments to §§14.104 and 14.105 are consistent with TANF. Specifically, the amendment to §14.104 adds wording regarding exemptions for cash gifts and contributions and overpayments for military pay, Unemployment Insurance Benefits (UIB), and Veterans' Association (V. A.) benefits and regarding deductions for costs related to producing income gained from illegal activities. The amendment to §14.105 includes wording changes regarding the exemption of income-producing property.

In §14.201, minor editorial changes have been adopted to improve the accuracy of required and optional services and their definitions.

The amendment to §14.204 increases access to the appropriate funding source of Medicaid, along with minor clarifications due to each county's judge signing a confidentiality agreement with the department in order to submit claims for Texas Medicaid or Vendor Drug Program reimbursement and shifts responsibility from the counties to the department for determining the Medicaid eligibility status of all eligible residents who are also SSI/SSDI appellants.

No comments were received regarding the proposal. A public hearing on the proposal was held at 10:00 a.m. on April 26, 2002, in the Public Hearing Room, Texas Department of Health, 12555 Riata Vista Circle, Austin, Texas to accept comments on the proposed rules. No comments were received.

SUBCHAPTER A. COUNTY PROGRAM ADMINISTRATION

25 TAC §14.1

The amendments are adopted under Health and Safety Code, Chapter 61 and Human Resources Code, Chapters 22 and 32. The department has rule making authority for CIHCP under Health and Safety Code Chapter 61.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203778
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: August 1, 2002
Proposal publication date: April 5, 2002
For further information, please call: (512) 458-7236

SUBCHAPTER B. DETERMINING ELIGIBILITY

25 TAC §§14.101, 14.104, 14.105

The amendments are adopted under Health and Safety Code, Chapter 61 and Human Resources Code, Chapters 22 and 32. The department has rule making authority for CIHCP under Health and Safety Code Chapter 61.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203779
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: August 1, 2002
Proposal publication date: April 5, 2002
For further information, please call: (512) 458-7236

SUBCHAPTER C. PROVIDING SERVICES

25 TAC §14.201, §14.204

The amendments are adopted under Health and Safety Code, Chapter 61 and Human Resources Code, Chapters 22 and 32.

The department has rule making authority for CIHCP under Health and Safety Code Chapter 61.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203780
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: August 1, 2002
Proposal publication date: April 5, 2002
For further information, please call: (512) 458-7236

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. LICENSE FEES AND BOAT AND MOTOR FEES

31 TAC §53.5

The Texas Parks and Wildlife Commission adopts an amendment to §53.5, concerning Public Land Hunting Permits and Fees, without changes to the proposed text as published in the February 22, 2002, issue of the *Texas Register* (27 TexReg 1264).

The amendment is necessary to consolidate fee and permit requirements in the most appropriate location within the agency's portion of the Texas Administrative Code, and to present fee and permit requirements in the most user-friendly manner possible.

The amendment will function by transferring certain provisions concerning fee requirements from Chapter 65 to Chapter 53, by making nonsubstantive grammatical changes to enhance readability, and by clarifying the fee requirements for specific types of public hunting and fishing opportunities offered or sponsored by the department.

The department received no comments concerning adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §11.0271 and §11.272, which authorize the commission to set nonrefundable participation fees for drawings for public hunting and fishing opportunities in an amount sufficient to pay the costs of operating the drawing, and to establish fees, not to exceed $25 per species, for each participant on an application in drawings for special hunting programs, packages, or events that exceed the costs of operating the drawing only if the fees charged are designated for use in the management and restoration efforts of the specific wildlife program implementing each special hunting program, package, or event.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203927
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: July 11, 2002
Proposal publication date: February 22, 2002
For further information, please call: (512) 389-4775

CHAPTER 65. WILDLIFE

SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §§65.191, 65.193, 65.194

The Texas Parks and Wildlife Commission adopts amendments to §§65.191, 65,193, and 65.194, concerning the Public Lands Proclamation, without changes to the proposed text as published in the February 22, 2002, issue of the *Texas Register* (27 TexReg 1265).

The amendment to §65.191, concerning Definitions, is necessary to remove all references to fees in order to locate all fee information in another chapter, and to standardize permit privileges on all public hunting lands.

The amendment to §65.193, concerning Access Permit Required and Fees, is necessary to remove all references to fees in order to locate all fee information in another chapter, to standardize permit privileges on all public hunting lands, and to maintain clear regulatory language.

The amendment to §65.194, concerning Competitive Hunting Dog (Field Trials) Permit and Fees, is necessary to remove all references to fees in order to locate all fee information in another chapter.

The amendment to §65.191 will function by removing references to fee amounts, which are redundant since fees are established in 31 TAC Chapter 53. The amendment also requires all persons who hunt on public hunting lands to possess an Annual Public Hunting Permit .

The amendment to §65.193 will function by removing references to fee amounts, which are redundant since fees are established in 31 TAC Chapter 53. The amendment also removes an exception for users of a Limited Public Use permit who hunt under certain circumstances on U.S. Forest Service lands, eliminates unnecessary language concerning internal cross-references, and rewords subsection (p) in the interests of grammatical sense. The amendment to §65.194 will also function by removing references to fee amounts, which are redundant since fees are established in 31 TAC Chapter 53.

The department received 32 comments in opposition to adoption of the proposed rules. Seven of the commenters opposed the standardization of hunting privileges under the Annual Public Hunting Permit and stated that by eliminating hunting privileges under the lower-priced Limited Public Use permit (LPU), the department was in effect charging an increased fee. The department disagrees, and responds that the U.S. Forest Service (the only units of the public hunting system on which the LPU permit authorizes hunting), on the basis of the relatively small number of LPU permits sold, has requested that all hunting take place under the APH permit in order to standardize privileges

and streamline administrative complexity. No comments were made as a result of the comments. The department received 132 comments in favor of adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish an open season on wildlife management areas and public hunting lands and authorizes the executive director to regulate numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands; Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the department if the commission determines that multiple use is the best utilization of the land's resources; Chapter 62, Subchapter D, which provides authority, as sound biological management practices warrant, to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife; and §42.0177, which authorizes the commission to modify or eliminate the tagging requirements of Chapter 42.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203932
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: July 11, 2002
Proposal publication date: February 22, 2002
For further information, please call: (512) 389-4775

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 368. FLOOD MITIGATION ASSISTANCE PROGRAM

31 TAC §§368.1, 368.2, 368.9

The Texas Water Development Board (the board) adopts amendments to 31 TAC §§368.1, 368.2, and 368.9 concerning the Flood Mitigation Assistance Program. Section 368.1 and §368.2 are adopted without changes to the proposed text as published in the May 3, 2002 issue of the *Texas Register* (27 TexReg 3717) and will not be republished. Section 368.9 is adopted with change to delete the "and" at the end of paragraph (a)(8) that is no longer needed. The amendments provide clarification consistent with directives from the Federal Emergency Management Agency (FEMA).

The 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 amendment to §368.2 will correct a reference to "subchapter" which should be "chapter." Section 368.9 is amended to add priority goals specified by FEMA in its annual allocation of funds, as a priority ranking criteria, which reflects that priorities established by FEMA are part of the consideration for evaluation of applications. The amendments also remove a reference to the NFIP which is not necessary with the addition of a definition for "insured structures."

No comments were received on the proposed amendments.

The amendments are adopted under the authority of the Texas Water Code §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.

§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 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);

(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 adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 20, 2002.

TRD-200203868
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: July 10, 2002
Proposal publication date: May 3, 2002
For further information, please call: (512) 463-7981

PART 16. COASTAL COORDINATION COUNCIL

CHAPTER 505. COUNCIL PROCEDURES FOR STATE CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES

SUBCHAPTER A. PURPOSE AND POLICY AND STATE AGENCY ACTIONS SUBJECT TO THE COASTAL MANAGEMENT PROGRAM

31 TAC §505.11

The Coastal Coordination Council (Council) adopts an amendment to §505.11, relating to Actions and Rules Subject to the Coastal Management Program without changes to the proposed text as published in the January 25, 2002, issue of the *Texas Register* (27 TexReg 575).

The adopted amendment deletes §505.11(a)(6)(K), relating to Actions and Rules Subject to the Coastal Management Program. The deletion of the reference to the Trans-Texas Water Program Management Committee reflects changes to state water planning laws as a result of the passage of Senate Bill 1 during the 1997 legislative session. Acts of the 75th Leg., R.S., Ch. 1010, page 3610, 1997.

The amendment relating to the deletion of language pertaining to the Trans-Texas Water Program Policy Management Committee (resulting from changes in state water planning laws) will have no impact on private real property interests. Consequently, no takings impact assessment is required pursuant to the Texas Government Code, §2007.043, and the Private Real Property Rights Preservation Act Guidelines, published at (21 TexReg 387) (1996) and amended at (25 TexReg 8087)(2000).

The rule will function by deleting references to the Trans-Texas Water Program Policy Management Committee.

No comments were received regarding the amendment.

This adopted rule amendment is adopted under Texas Natural Resources Code Chapter 33, §33.051, which authorizes the Council to perform the duties provided in Subchapter C, and §33.054, which allows the Land Commissioner to review and amend the Coastal Management Program.

Texas Natural Resources Code §33.051 and §33.054 are affected by this rulemaking action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 18, 2002.

TRD-200203814
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Effective date: July 8, 2002
Proposal publication date: January 25, 2002
For further information, please call: (512) 305-9129

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.73

The Comptroller of Public Accounts adopts an amendment to §3.73, concerning the qualification for and determination of fair market value deduction for replaced vehicles, without changes to the proposed text as published in the April 19, 2002 issue of the *Texas Register* (27 TexReg 3310).

This adoption amendment incorporates legislatives changes made by SB1125, 77th Legislative Session, 2001, and by HB3211, 76th Legislative Session, 1999, allowing lessors and renters to claim fair market value deductions for replaced vehicles that are owned by certain affiliated companies. This adoption amendment also makes clarification changes.

No comments were received regarding adoption of the amendment.

This amendment is adopted 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, §152.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 20, 2002.

TRD-200203875
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: July 10, 2002
Proposal publication date: April 19, 2002
For further information, please call: (512) 475-0387

CHAPTER 7. PREPAID HIGHER EDUCATION TUITION PROGRAM

SUBCHAPTER A. GENERAL RULES

34 TAC §7.1

The Comptroller of Public Accounts adopts an amendment to §7.1, concerning general statement of purpose, without changes to the proposed text as published in the May 3, 2002, issue of the *Texas Register* (27 TexReg 3723).

§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.

No comments were received regarding adoption of the §7.1.

The amendment is adopted 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203956
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: July 14, 2002
Proposal publication date: May 3, 2002
For further information, please call: (512) 475-0387

34 TAC §7.2

The Comptroller of Public Accounts adopts an amendment to §7.2 concerning definitions, without changes to the proposed text as published in the May 3, 2002, issue of the *Texas Register* (27 TexReg 3724).

The amendment deletes the definition of required penalty to reflect changes in federal law applicable to prepaid higher education tuition programs.

No comments were received regarding adoption of the amended rule.

The amendment is adopted 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203957
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: July 14, 2002
Proposal publication date: May 3, 2002
For further information, please call: (512) 475-0387

34 TAC §7.3

The Comptroller of Public Accounts adopts an amendment to §7.3, concerning tax exempt status requirements, without changes to the proposed text as published in the May 3, 2002, issue of the *Texas Register* (27 TexReg 3725).

The amendment deletes references to a required penalty for refunds made under a prepaid tuition contract to reflect changes in federal law.

No comments were received regarding adoption of the amended rule.

The amendment is adopted 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.

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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Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: July 14, 2002
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For further information, please call: (512) 475-0387

SUBCHAPTER G. BENEFICIARIES

34 TAC §7.63

The Comptroller of Public Accounts adopts an amendment to §7.63, concerning change of beneficiary, without changes to the proposed text as published in the May 3, 2002, issue of the *Texas Register* (27 TexReg 3725).

The amendment deletes references to a required penalty for refunds made under a prepaid tuition contract to reflect changes in federal law.

No comments were received regarding adoption of the amended rule.

The amendment is adopted 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.

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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Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

SUBCHAPTER H. CONVERSION

34 TAC §7.71

The Comptroller of Public Accounts adopts an amendment to §7.71, concerning conversions, without changes to the proposed text as published in the May 3, 2002, issue of the *Texas Register* (27 TexReg 3726).

The amendment deletes references to a required penalty for refunds made under a prepaid tuition contract to reflect changes in federal law.

No comments were received regarding adoption of the amended rule.

The amendment to §7.71 is adopted 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.

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-200203960
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

34 TAC §7.72

The Comptroller of Public Accounts adopts the repeal of §7.72, concerning required penalties on certain payments, without changes to the proposed repeal as published in the May 3, 2002, issue of the *Texas Register* (27 TexReg 3727).

The rule is repealed to reflect changes in federal law which no longer requires the penalties.

No comments were received regarding adoption of the repeal.

This repeal is adopted 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.

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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Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

SUBCHAPTER I. REFUNDS, TERMINATION

34 TAC §7.81

The Comptroller of Public Accounts adopts an amendment to §7.81, concerning refunds, with changes to the proposed text as published in the May 3, 2002, issue of the *Texas Register* (27 TexReg 3727).

The amendment deletes references to a required penalty for refunds made under a prepaid tuition contract to reflect changes in federal law.

Agency staff commented that the reference to Internal Revenue Code, §529(b)(3) contained in proposed §7.81(d)(3) and (d)(4) should be deleted because of amendments to §529 which make the reference no longer accurate. The comptroller agrees with these comments and has revised §7.81 accordingly. No other comments were received regarding adoption of the amended rule.

The amendment to §7.81 is adopted 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. 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 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 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 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. 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. 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. 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. Refund payments may be made in semiannual installments to the purchaser of the prepaid tuition contract.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203962
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: July 14, 2002
Proposal publication date: May 3, 2002
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 adopts new §§7.101-7.111, concerning the Higher Education Savings Plan. New §7.103 and §7.111 are adopted with changes to the proposed text as published in the May 3, 2002, issue of the *Texas Register* (27 TexReg 3729). New §§7.101, 7.102, 7.104, 7.105, 7.106, 7.107, 7.108, 7.109, and 7.110 are adopted without changes to the proposed text as published in the May 3, 2002 issue of the *Texas Register* (27 TexReg 3729).

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. These rules implement Senate Bill 555, enacted by the 77th Legislature, 2001.

Comments were received from Clark, Thomas & Winters P.C. and agency staff regarding adoption of the new rules. Clark Thomas suggested revisions to §7.103(c)(1) relating to the timing of the calculation of the market value of a savings trust account for the purpose of ensuring no excess contributions. Clark Thomas suggested changing the date of calculation of market value of the savings trust account from the end of the preceding year to the date of the contribution, to ensure the rule is consistent with Internal Revenue Code §529 prohibition against excess contributions. The comptroller agrees with this comment and has revised §7.103(c)(1) accordingly.

Agency staff have suggested revisions to §7.111 subsections (a)(2) and (c)(2) to make the rule consistent with Internal Revenue Code §529. Staff suggested revising §7.111(a)(2) to require the owner of a savings account to certify the amount of a withdrawal that constitutes a nonqualified withdrawal if requested by the plan manager, instead of requiring the certification each time a withdrawal is requested, to make the rule consistent with Internal Revenue Code §529. The comptroller agrees with this comment, and has revised §7.111(a)(2) accordingly. Staff also suggested a revision to §7.111(c)(2) to delete the reference to Internal Revenue Code §529(b)(3)(B), because this subsection of the Code no longer exists. The comptroller agrees with this comment and has revised §7.111(c)(2) accordingly.

The new rules are adopted 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.

§7.103. 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 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). 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.

§7.111. 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 if requested by the plan manager; 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:

(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 manage.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203963
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: July 14, 2002
Proposal publication date: May 3, 2002
For further information, please call: (512) 475-0387

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.402

The Comptroller of Public Accounts adopts an amendment to §9.402, concerning special use application forms, without changes to the proposed text as published in the March 29, 2002, issue of the *Texas Register* (27 TexReg 2421).

This rule is amended to add wildlife management to the model application form for 1-d-1 agricultural land appraisal, required by House Bill 3123, 77th Legislature, 2001.

The comptroller has changed the wording of a question in the model form to conform with a change in the adopted version of 34 TAC §9.4003 concerning the qualification of land for special appraisal based on wildlife management use. A change in subsection (b)(6)(D) removed a requirement that tracts within a wildlife management association be subject to deed restrictions, covenants, or easements that legally obligate the owner of each tract to perform activities necessary to qualify for wildlife management use. The subsection was amended to require only that tracts in a wildlife management association be subject to a written agreement legally obligating the owner to perform the activities necessary to qualify for wildlife management.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §5.03, which requires the comptroller to adopt rules establishing the minimum standards for the administration and operation of an appraisal district, Tax Code, §5.07, which requires the comptroller to prescribe the contents and form for the administration of the property tax system, and Tax Code, §11.43(f), which requires the comptroller to prescribe the contents and form for each kind of property tax exemption.

The amendment implements Tax Code, §23.521.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2002.

TRD-200203936

Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: July 14, 2002
Proposal publication date: March 29, 2002
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SUBCHAPTER I. VALIDATION PROCEDURES

34 TAC §9.4003

The Comptroller of Public Accounts adopts a new §9.4003, concerning wildlife management use, with changes to the proposed text as published in the March 29, 2001, issue of the *Texas Register* (27 TexReg 2421).

The new section implements House Bill 3123, 77th Legislature, 2001, effective September 1, 2001.

The comptroller received numerous comments and held a public hearing to receive additional comments from interested parties, pursuant to Government Code, §2001.029. The comptroller made several changes based on some of these comments.

A professional wildlife management consultant submitted a comment requesting that the definition of "human use" in subsection (b)(1) should be amended to delete the term "wildlife" and insert the term "medicine." The comptroller has made the change to be consistent with the wording of §23.51(7) of the Tax Code.

Several persons, including a chief appraiser and a wildlife management consultant, submitted comments requesting the comptroller to include specific language requiring otherwise qualified tracts within a wildlife management property association to be contiguous. The parties suggested requiring that all tracts within an association to be contiguous would mitigate, to some extent, the detrimental effects of habitat fragmentation in developed areas. The comptroller made the suggested change by adding a new subsection (b)(6)(A), requiring tracts within a wildlife management association to be contiguous, provided that tracts may be separated by public roads or bodies of water.

Several persons, including an attorney and a wildlife management consultant, requesting the comptroller to delete the requirement that an owner of a tract in a wildlife management association formally deed-restrict the use of his or her tract relative to future land uses. The parties noted that there are other types of "group" agricultural uses, such as blanket grazing leases, wherein participating landowners may qualify for open-space appraisal, that do not require each landowner to conduct agricultural activities in the future. The comptroller made the suggested change by deleting the requirement in subsection (b)(6)(D) that tracts within a wildlife management association be subject to deed restrictions, covenants, or conservation easements as defined by Natural Resources Code, Chapter 183, that legally obligates the owner of each tract to perform necessary activities to qualify for wildlife management use appraisal. The amended language requires tract owners to execute a written agreement legally obligating them to perform the necessary activities to qualify for wildlife management use appraisal. The amendment addresses the fact that open-space appraisal qualifications are to be based on current use of the land, and not future intentions or plans.

Several persons submitted comments requesting the comptroller to define the term "tract" as it applies to qualification for wildlife management. Parties stated a concern that the term tract is used throughout the proposed rule without being clearly and specifically defined. The comptroller has added a definition of tract in subsection (b)(10) to clarify that the term can include multiple parcels of land under common ownership. Since the term "tract" is now defined, the comptroller has removed references to "properties" and "property" in subsection (d)(2) and replaced the terms with the more appropriate term "tract."

A professional wildlife management consultant submitted a comment requesting that the comptroller add a comma following the term "migrating." The comptroller made the change in subsection (e)(1)(B), since that is how the phrase appears in the statute.

The co-authors of House Bill 3123, Representatives Clyde Alexander and Bob Turner, submitted a comment requesting the comptroller to include language clarifying that a change of ownership of qualified wildlife management land does not trigger application of the percentage requirements in the rule. The comptroller agreed and amended subsection (e)(4)(B) to provide that only a smaller tract transferred as part of a previously qualified tract would be subject to the percentage requirements in subsection (f).

A professional wildlife management consultant submitted a comment requesting that the comptroller delete the term "minimum," as applied to the phrase "wildlife use percentage." The comptroller has made the change, since the term may be confusing and is not necessary, and because the definition of wildlife use percentage in subsection (b)(8) clearly provides that a tract must meet the appraisal district board of directors' adopted percentage.

Based on a staff recommendation, the comptroller added the term "management" to the phrase "wildlife management association," to conform to a definition in an earlier subsection.

A property tax attorney submitted a comment requesting language allowing a property owner to show the chief appraiser, by "clear and convincing" evidence that he or she owns a "unique" tract that merits a lower percentage ratio than required by this rule and the local appraisal district board of directors. The comptroller agreed with the requested change and included language in subsection (g) allowing an exception to the percentage requirements in subsection (f) if a property owner demonstrates, by clear and convincing evidence, that the unique characteristics of the habitat and/or managed species makes it possible to effectively manage for wildlife at a lower percentage level. If granted the exception, the owner would be required to meet all other wildlife management use qualification requirements. The exception is required to address legal concerns that the rule must follow constitutional and statutory requirements that open-space appraisal qualification must be based on the land's use.

Numerous persons submitted comments requesting the comptroller to delete the term "may" in subsection (h) and replace it with the term "shall." The comptroller agreed with the suggested change, since the word "may" implies that continued open-space appraisal of a particular parcel of qualified wildlife management land would be up to the chief appraiser's discretion.

Numerous persons submitted comments requesting the comptroller to delete the term "intact" in subsection (h) and include language clarifying that tracts qualified for wildlife management use before the 2002 tax year would continue to qualify. The comptroller agreed, and has included language that will provide for the continued qualification of tracts containing an equal or greater amount of qualifying acreage than the acreage contained in the

tract prior to January 1, 2002. Previously qualified tracts must continue to satisfy all requirements for qualification established by this Section.

Summary of additional comments:

Several persons submitted comments suggesting that the formula for determining wildlife use percentage in subsection (b)(8) is either inappropriate and/or does not reflect the actual use of the land. The comptroller respectfully disagreed with these assertions. The Texas Department of Parks and Wildlife developed the wildlife use percentage components in the rule in a process that included input from their team of professional wildlife biologists with extensive knowledge of wildlife habitats, species, and effective management practices throughout the state. The comptroller made no changes to the subsection because to do so would be inconsistent with the cumulative expert advise of the agency charged in House Bill 3123 with establishing wildlife use qualification standards. Also, the addition of the "clear and convincing evidence" standard, as discussed in response to an earlier comment, allows an owner the opportunity to establish that a particular tract can be effectively used for wildlife management purpose.

Several persons, including an attorney, a wildlife management consultant and a chief appraiser, submitted comments questioning the role of the appraisal district board of directors in subsection (f) in determining wildlife use percentages for each county in the state. The comments generally stated that the appraisal district board should have no authority over determining matters involving appraisal of property for property tax purposes. The comptroller respectfully disagreed with this analysis and submits that the appraisal district board is an appropriate entity to determine the county wildlife use percentage. The board does have some authority over appraisals through its duties to contract and budget. Through its contracting authority, the board determines how appraisals are performed-through in-house appraisal, use of a private appraisal firm, or both. The district's operating budget reflects the board's decisions on handling appraisals. The board also exercises its influence when it works with the chief appraiser to establish a plan for reappraising real property at least once every three years. The chief appraiser must have written approval from the board to appeal an appraisal review board order, settle lawsuits and direct litigation. Through its policy-making power, the board may adopt policies outlining the chief appraiser's authority.

Several persons, including landowners and an attorney, submitted comments urging the comptroller to postpone adoption of the rule until the 2003 tax year, leaving current law in effect for the 2002 tax year. The comptroller made no change based on these comments because House Bill 3123 requires that the rules "apply to tax years beginning on or after January 1, 2002." The bill also requires the comptroller to adopt the qualification standards within the rule and to distribute them to each appraisal district--"as soon as practicable after the effective date of this Act." The Act took effect September 1, 2001. Postponing adoption of the rule until 2003 would be contrary to a clear legislative mandate.

Several persons submitted comments suggesting alternative language for inclusion in subsection (h), that were not included in the comptroller's amendments to that subsection. Subsection (h) requires the continued qualification of wildlife management land that was appraised as qualified open space land based on wildlife management use prior to tax year January 1, 2002. The comptroller made appropriate changes to subsection (h) to accomplish legislative intent, consistent with current law.

Several appraisal districts, wildlife management consultants, landowners and attorneys submitted comments concerning provisions in the rule applicable to: 1) wildlife management associations; 2) multi-county tracts; 3) qualifications for wildlife management experts; 4) applications for traditional ag-use qualification following failure to meet the rule's percentage requirements; 5) inter-family real property transactions; 6) rollback taxes; 7) re-application by new owners; 8) alternative definitions of terms such as "contiguous" and "tract;" and 9) the Parks and Wildlife Department management plan format. The comptroller made no additional changes, deferring to chief appraisers' existing authority to approve, deny or request additional information on applications for special appraisal and the Texas Department of Parks and Wildlife's continuing expertise and jurisdiction over wildlife management plan content and format.

This new section is adopted under Tax Code, §5.03, which requires the comptroller to adopt rules establishing the minimum standards for the administration and operation of an appraisal district, Tax Code, §5.07, which requires the comptroller to prescribe the contents of forms for the administration of the property tax system, and Tax Code, §23.54(b), which requires the comptroller to prescribe the contents and form of for applications for the appraisal of agricultural land.

The new section implements Tax Code, Chapter 23, Subchapter D, §23.521.

§9.4003. Wildlife Management Use.

(a) Purpose. The purpose of this section is to implement the legislative intent of House Bill 3123, 77th Legislature, 2001, as follows:

(1) to encourage the preservation of open space for wildlife management and conservation of the state's natural heritage in all areas of the state;

(2) to create definitive standards for tax appraisers to follow in determining the qualification of property for appraisal on the basis of wildlife management use;

(3) to create a mechanism in addition to traditional agricultural use to allow ranchers, farmers, and land managers to conserve open space;

(4) to affirm local control of property taxation;

(5) to preserve revenue neutrality for all concerned parties; and

(6) to allow each property currently qualified in wildlife management use to continue appraised as open space land.

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

(1) Human use--The use of indigenous wildlife or habitat for food, medicine, or recreation by humans.

(2) Indigenous wildlife--All native animals that originated in or naturally migrated or migrate through an area and that are capable of living naturally in that area. The term does not include exotic livestock as defined by Agriculture Code, §142.001.

(3) Migrating population--Indigenous wildlife that moves between seasonal ranges.

(4) Sustained breeding population--A group or population of indigenous wildlife that is capable of perpetuating itself through natural breeding.

(5) Recreation--An active or passive activity for pleasure or sport.

(6) Wildlife management property association--A group of landowners whose tracts of land:

(A) are contiguous, provided that the presence of public roads and bodies of water does not affect the contiguity of the tracts;

(B) are subject to provisions of subsection (f)(2) of this section;

(C) are qualified under Tax Code, Chapter 23, Subchapter D; and

(D) are subject to a written agreement, that legally obligates the owner of each tract of land to perform the activities necessary to qualify for wildlife management use appraisal under this section.

(7) Wildlife use appraisal regions designated by the Texas Parks and Wildlife Department--

(A) Region 1--Brewster, Crane, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Ward, and Winkler counties.

(B) Region 2--Andrews, Aransas, Archer, Armstrong, Atascosa, Bailey, Baylor, Bee, Borden, Briscoe, Brooks, Callahan, Cameron, Carson, Castro, Childress, Cochran, Coke, Coleman, Collingsworth, Concho, Cottle, Crockett, Crosby, Dallam, Dawson, Deaf Smith, Dickens, Dimmit, Donley, Duval, Ector, Edwards, Fisher, Floyd, Foard, Frio, Gaines, Garza, Glasscock, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hidalgo, Hockley, Howard, Hutchinson, Irion, Jim Hogg, Jim Wells, Jones, Kenedy, Kent, Kimble, King, Kinney, Kleberg, Knox, Lamb, La Salle, Lipscomb, Live Oak, Lubbock, Lynn, McMullen, Martin, Maverick, Medina, Menard, Midland, Mitchell, Moore, Motley, Nolan, Nueces, Ochiltree, Oldham, Parmer, Potter, Randall, Reagan, Real, Refugio, Roberts, Runnels, San Patricio, Schleicher, Scurry, Shackelford, Sherman, Starr, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Upton, Uvalde, Val Verde, Webb, Wheeler, Wichita, Wilbarger, Willacy, Yoakum, Zavala, and Zapata counties.

(C) Region 3--Bandera, Bell, Bexar, Blanco, Bosque, Brown, Burnet, Clay, Comal, Comanche, Cooke, Coryell, Denton, Eastland, Erath, Gillespie, Hamilton, Hays, Hood, Jack, Johnson, Kendall, Kerr, Lampasas, Llano, McCulloch, Mason, Mills, Montague, Palo Pinto, Parker, San Saba, Somervell, Stephens, Tarrant, Travis, Williamson, Wise, and Young counties.

(D) Region 4--Anderson, Angelina, Austin, Bastrop, Bowie, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Dallas, Delta, DeWitt, Ellis, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Galveston, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Hunt, Jackson, Jasper, Jefferson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, McLennan, Madison, Marion, Matagorda, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Rains, Red River, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Wharton, Wilson, and Wood counties.

(8) Wildlife use percentage--The percentage of a tract of land that the Texas Parks and Wildlife Department has determined must be in wildlife management use for the land to be qualified for appraisal based on wildlife management use. This percentage is calculated using the total acreage of the tract minus one as the numerator, and the total acreage as the denominator.

(9) Wintering population--Indigenous wildlife that occupies an area during the winter as a consequence of natural migratory behavior.

(10) Tract--The entire area of a parcel or contiguous parcels of land, as reflected in appraisal district records, under common ownership.

(c) The *Guidelines for Qualification of Agricultural Land in Wildlife Management Use* shall be the reference used by the chief appraiser in each county to determine the qualification of property for appraisal based on wildlife management use. These guidelines may be obtained by contacting the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.
Figure: 34 TAC §9.4003(c)

(d) Wildlife Management Plan.

(1) A Wildlife Management Plan shall be completed on a form supplied by the Texas Parks and Wildlife Department for each tract of land for which appraisal based on wildlife management use is sought. The form and regional management plans may be obtained by contacting Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744-3291. The activities and practices contained in the plan shall be consistent with the activities and practices recommended in the appropriate Texas Parks and Wildlife Department regional management plan for the region in which the property is located, and shall include:

(A) information on ownership and the property's history and current use;

(B) specific species targeted for wildlife management activities and practices;

(C) landowner goals for the property; and

(D) specific qualifying wildlife and habitat management activities and practices that support the species being managed.

(2) A wildlife property association may prepare a single Wildlife Management Plan, provided the information required by paragraph (1)(A) - (D) of this subsection is included for each tract in the wildlife management association.

(e) Qualifications for appraisal based on wildlife management use.

(1) Land qualifies for appraisal based on wildlife management use if:

(A) it is appraised as qualified open space land under Tax Code, §23.51(1);

(B) it is instrumental in supporting a sustaining breeding, migrating, or wintering population of indigenous wildlife;

(C) the indigenous wildlife population is produced for human use as defined under subsection (b)(2) of this section;

(D) the wildlife management plan required by this subsection is being implemented; and

(E) no fewer than three of the activities and practices described in *Guidelines for Qualification of Agricultural Land in Wildlife Management* are performed on the land in any given year.

(2) A tract of land that is appraised as qualified open space land under the provisions of Tax Code, Chapter 23, Subchapter D, shall be eligible for appraisal based on wildlife management use at the request of the owner of the tract of land, provided the request is made prior to May 1.

(3) The provisions of subsection (f) of this section apply to any application for appraisal based on wildlife management use if:

(A) in the previous tax year the tract was part of a larger tract which was appraised under any provision of Tax Code, Chapter 23, Subchapter D; and

(B) ownership of the tract is different from the ownership that existed on January 1 of the previous tax year.

(4) The provisions of subsection (f) of this section apply to any application for appraisal based on wildlife management use if:

(A) in the previous tax year the tract was appraised based on wildlife management use; and

(B) ownership of the tract is different from the ownership that existed on January 1 of the previous tax year and the resulting tract contains less acreage than the tract contained prior to the change in ownership.

(f) Percentage of acreage to be dedicated to wildlife management. The Appraisal District Board of Directors in each county shall designate a wildlife use percentage that shall apply to each tract of land for which a wildlife use qualification is sought.

(1) The wildlife use percentage shall be selected from the percentage ranges specified for the county by the following, as applicable:

(A) Region 1--not less than 97% or more than 99%;

(B) Region 2--not less than 96% or more than 98%;

(C) Region 3--not less than 93% or more than 95%; and

(D) Region 4--not less than 92% or more than 94%.

(2) The wildlife use percentage for properties within a wildlife management property association shall be as follows:

(A) Region 1--either 95% or 96%;

(B) Region 2--either 94% or 95%;

(C) Region 3--either 91% or 92%; and

(D) Region 4--either 90% or 91%.

(3) The wildlife use percentage for a property in an area designated by the Texas Parks and Wildlife Department as habitat for an endangered species, a threatened species, or a candidate species for listing as threatened or endangered shall be as set forth in this subsection; however, the wildlife and habitat management plan for such a property must address specific practices and activities intended to benefit specific species.

(A) Region 1--either 95% or 96%;

(B) Region 2--either 94% or 95%;

(C) Region 3--either 91% or 92%; and

(D) Region 4--either 90% or 91%.

(g) Effective date. Effective tax year beginning January 1, 2002, except as otherwise provided by subsection (h) of this section, to qualify for appraisal based on wildlife management use, a property must meet the standards established by this section. Provided however, that a property owner who demonstrates, by clear and convincing evidence, that the unique characteristics of their habitat and/or managed species makes it possible to effectively manage for wildlife at a ratio less than that otherwise required under subsection (f) of this section, the property shall qualify for appraisal based on wildlife management, as long as the property meets all other standards established by this section.

(h) Exception. Notwithstanding any other provision of this section, a property that was appraised as qualified open space land based on wildlife management use prior to tax year January 1, 2002, shall continue to be appraised as open space land as provided by Tax Code, Chapter 23, Subchapter D, as long as the entire tract subject to the qualification contains an equal or greater amount of qualifying acreage than the acreage contained in that tract prior to January 1, 2002, and except for subsection (f) of this section, continues to satisfy all requirements for qualification established by 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 June 24, 2002.

TRD-200203935
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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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 19. BREATH ALCOHOL TESTING REGULATIONS

SUBCHAPTER B. TEXAS IGNITION INTERLOCK DEVICE REGULATIONS

37 TAC §§19.21 - 19.29

The Texas Department of Public Safety adopts amendments to §§19.21-19.23, 19.25, 19.26, 19.28, and 19.29, concerning Texas Ignition Interlock Device Regulations, without changes to the proposed text as published in the April 19, 2002, issue of the *Texas Register* (27 TexReg 3311). §19.24 and §19.27 are adopted with changes and will be republished.

Amendments to the sections are necessary in order to allow the department to enforce shortcomings in interlock vendor actions and guide the interlock vendor to more easily regain lost certification in the program.

Oral comments were received from Ms. Deborah Coffee and Mr. Jim Ballard of Smart Start, Inc., concerning the proposed changes. The comments as well as the department's response are summarized below.

COMMENT: Smart Start opposes the proposed change at 19.24(a)(4) that would reduce requirements on IID Vendors

concerning mandatory reporting of tampering to the appropriate judicial authority. In fact, Smart Start believes that there should be a 48 hour time limit for reporting such tampering. The proposed change will reduce cost to the industry but Smart Start believes that this is the wrong direction to be going with reporting of tampering and will lessen the effectiveness of the IID program.

RESPONSE: The department does not believe that the proposed change at 19.24 will lessen the effect of IID usage. A survey of "appropriate judicial authorities" in the April 2002 issue of the *Journal of the Texas Probation Association* has drawn no response to date indicating what they would or would not like to see in the way of required reports. Even though the proposed change will still allow those authorities that want such a report to require that report, we are not opposed to reinstating the old wording with only changes from the words "judiciary" to "judicial" and "scientific director" to "department."

CHANGE: Concerning subsection (a)(4), delete the proposed text that reads as follows: "When evidence of tampering is discovered, these records shall be made available to the appropriate judicial authority and upon request to the department." Amend subsection (a)(4) to read as follows: When evidence of tampering is discovered, the appropriate judicial authority shall be notified in writing and these records shall be made available upon request to the department."

COMMENT; Smart Start also opposes the proposed change at 19.27(c)(4)(A) that would reduce requirements on IID Vendors concerning mandatory reporting of any violation of a court order (concerning the use of an IID) to the appropriate judicial authority. Smart Start believes that the current 48 hour time limit for reporting such tampering should remain in effect.

RESPONSE: Upon re-evaluation of this passage, the department realized that the current wording at 19.27(c)(4)(A) is required by law (Texas Transportation Code, §521.2476(b)(7)) and so we are reinstating the original wording with only a change from the word "judiciary" to "judicial."

CHANGE: Concerning subsection (c)(4)(A), delete the proposed text that reads as follows: "submitting violation(s) if any, of any court order to the appropriate judicial authority when requested." Amend subsection (c)(4)(A) to read as follows: submitting violation(s) if any, of any court order to the appropriate judicial authority, not later than 48 hours after the vendor discovers the violation."

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.2476, which requires the department to create and maintain these rules.

§19.24. Miscellaneous Requirements.

(a) Anticircumvention. The device shall be designed so that anticircumvention features will be difficult to bypass.

(1) Anticircumvention provisions shall include, but not be limited to, prevention or preservation of evidence of cheating by attempting to use bogus or filtered breath samples or bypassing the breath sampling requirements of the device electronically.

(2) The device may use special seals or other methods that record attempts to bypass anticircumvention provisions.

(3) The device shall be checked for evidence of tampering at least once every sixty (60) days or more frequently if the need arises.

(4) When evidence of tampering is discovered, the appropriate judicial authority shall be notified in writing and these records shall be made available upon request to the department.

(b) Operational features.

(1) The device shall be designed to permit a free restart of a motor vehicle's ignition within a reasonable time as approved by the department after the ignition has been shut off, without requiring a further alcohol analysis.

(2) The device shall also automatically purge alcohol before allowing subsequent analyses. In addition to the operational features of these regulations, the department may impose additional requirements, as needed, depending upon design and functional changes in device technology.

(3) The device shall have a data storage system of sufficient capacity to facilitate the recording and maintaining of all daily driving activities for the period of time elapsed from one maintenance and calibration check (as referred to in §19.25(a)(a)) of this title (relating to Maintenance and Calibration Requirements) to the next.

(c) Product liability. The manufacturer of the device shall carry liability insurance covering product liability, including coverage in Texas with a minimum policy limit of $1 million.

(d) Service support. The manufacturer shall ensure responsibility for service support within a maximum of 48 hours after notification of a reported malfunction. This support shall be in effect during the period the device is required to be installed in a motor vehicle.

(e) Modifications. Once a device by model and/or class has been approved, no modification in design or operational concept may be made without prior written consent of the department. This does not include replacement or substitution of repair parts to maintain the device nor software changes that do not modify the operational concept of the device.

(f) Warning label. A label warning against tampering, circumventing, or misuse shall be affixed to each device.

(g) Safety. The device shall be designed to comply with generally recognized safety requirements.

(h) Specification and operating instructions. Manufacturers shall provide to the department with each device submitted for approval, a precise set of specifications, which describe the features of the device concerned in the evaluation of its performance. A set of detailed operating instructions shall be supplied with each device.

(i) Product indemnity. The manufacturer shall provide a signed statement that the manufacturer shall indemnify and hold harmless the state of Texas, the department and its officers, employees, and agents from all claims, demands, and actions, as a result of damage or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the manufacturer or their representative relating to the installation, service, repair, use and/or removal of an IID.

(j) General. Any other requirements as may be determined necessary by the department to ensure that the device functions properly and reliably.

§19.27. Certification and Inspection of Service Centers.

(a) All IID service centers conducting business in this state, whether fixed site or mobile, must have the approval of and be certified by the department.

(b) To initiate certification for an IID service center, a vendor or the IID manufacturer's representative shall submit an application to the department for approval. The application, available from the department, shall show the physical location of the service center, the brand and/or model of the ignition interlock device(s) to be merchandised and the reference sample device(s) to be used. The application shall also contain a statement acknowledging permission from the IID manufacturer to vend the IID described by the application. Only IIDs listed on the approved list referenced in §19.22(a) of this title (relating to Procedure for Device Approval) may be merchandised. A vendor applying for certification of an IID service center must agree to:

(1) allow access for inspection under subsection (d) of this section,

(2) comply with subsection (g) of this section,

(3) comply with subsection (c) of §19.24 of this title (relating to Miscellaneous Requirements) concerning product liability and liability insurance requirements, and

(4) comply with subsection (d) of §19.24 of this title (relating to Miscellaneous Requirements) concerning service support requirements.

(c) All IID testing techniques, in order to be approved, shall meet, but not be limited to, the following:

(1) A certified IID service center shall be located in a facility which properly and successfully accommodates installing, inspecting, downloading, calibrating, repairing, monitoring, maintaining, servicing and/or removing a specific IID device(s). The service center must incorporate the use of analysis of a reference sample such as headspace gas from a mixture of water and a known weight of alcohol at a known temperature, the results of which must agree with the reference sample predicted value as in §19.25(b)(1)(A) and (B) of this title (relating to Maintenance and Calibration Requirements), or other methodologies that may be approved by the department. Preparatory documentation (such as certificate of analysis) on the reference sample solution(s) shall be available to the department. Only reference sample devices approved by the department may be used in certified IID operations.

(2) Services rendered by the IID service center must be performed by a properly trained and certified service representative. IID service centers shall maintain sufficient staff to ensure an acceptable level of service. Monitor checks shall be scheduled in a manner such as not to deprive the client of an acceptable level of service. The IID service center must at all times be staffed with at least one certified service representative. Potential service representative candidates may train in the certified IID service center only under the direct supervision of a currently certified service representative. The potential service representative candidate will be given a reasonable time as determined by the department to train before being required to take and pass the IID service representative examination.

(3) All analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210L).

(4) The applicant must agree to maintain any specified records designated by the department, including but not limited to:

(A) submitting violation(s) if any, of any court order to the appropriate judicial authority, not later than 48 hours after the vendor discovers the violation,

(B) maintaining complete records of each device installation for five years from the date of the removal,

(C) making IID records available, either by inspection or via copy to any appropriate judicial authority and upon request to the department.

(5) All anticircumvention features must be activated on any installed IID.

(6) The device must be installed and inspected in accordance with any applicable court order. Furthermore, the service center, through the certified IID representative(s), shall perform a visual inspection of the vehicle, the device, and the device's wiring to ensure no tampering or circumvention has occurred during the monitoring period. In the case wherein the client returns to the service center as in §19.25(a) of this title (relating to Maintenance and Calibration Requirements) absent their vehicle, such fact shall be made available to the appropriate judicial authority.

(d) An IID inspector or a designated representative of the department may at any time make an inspection of the certified IID service center to ensure compliance with these regulations.

(e) A designated custodian of records, when required, shall be provided by the vendor to testify in court and provide testimony concerning the interpretation of any data storage system records, as required by these courts and to answer questions concerning certification of the IID program.

(f) Upon proof of compliance with subsections (a)-(c) of this section, certification will be issued by the department. Issuance of a certificate to the service center shall be evidence that the service center meets all necessary criteria for approval and certification. Prior to issuance of the certification, an on- site evaluation may be required by the department to ensure compliance with the provisions of this section.

(g) Certification of the IID service center is contingent upon the applicant's agreement to conform and abide by any directives, orders, or policies issued or to be issued by the department regarding any aspect of the IID service center; this shall include, but not be limited to, the following:

(1) program administration;

(2) reports;

(3) records and forms;

(4) inspections;

(5) methods of operations and testing techniques;

(6) personnel training and qualifications;

(7) criminal history considerations for service representatives; and

(8) records custodian.

(h) Certification of an IID service center may be denied, withdrawn, inactivated, suspended, or revoked by the department if a vendor, service center, service representative, or IID equipment fails to meet all criteria stated in this section, or if the vendor violates any law of this state that applies to the vendor. An IID service center whose pending application for certification has been denied, or an IID service center whose certification has been withdrawn, inactivated, suspended or revoked may appeal such action in writing to the director, who will decide whether the action of the department will be affirmed or set aside. The director may allow the pending application for certification of the IID service center, or the director may reinstate certification of the IID service center appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary.

(i) Recertification of a service center whose certification has been withdrawn, inactivated, suspended or revoked will require a written request from the applicant to the department and successful completion of the original requirements for certification as outlined in subsection (b) of this section and/or other requirements as determined by the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 20, 2002.

TRD-200203865
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: July 10, 2002
Proposal publication date: April 19, 2002
For further information, please call: (512) 424-2135

CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER A. VEHICLE INSPECTION STATION LICENSING
37 TAC §23.3

The Texas Department of Public Safety adopts an amendment to §23.3, concerning Specific Requirements for Public, Fleet, and Governmental Vehicle Inspection Stations, without changes to the proposed text as published in the April 19, 2002, issue of the *Texas Register* (27 TexReg 3321).

§23.3 defines and provides the standards for the physical facilities of a department certified vehicle inspection station. The amended section is necessary to accommodate for equipment changes in vehicle inspection stations that perform emission testing. Further, the amendment will expand the number of existing facilities that may become vehicle inspection stations.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which provides authorization for the department to adopt rules to administer and enforce the compulsory inspection of vehicles; §548.005, which authorizes the department to permit inspections under terms and conditions the department prescribes; §548.401, which only authorizes inspections under rules adopted by the department; and §548.403, which authorizes the department to approve inspection station certification only if the station location complies with department requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 20, 2002.

TRD-200203864
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: July 10, 2002
Proposal publication date: April 19, 2002
For further information, please call: (512) 424-2135

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) adopts amendments to §19.403 and new §19.423 in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. New §19.423 is adopted with changes to the proposed text published in the May 3, 2002, issue of the *Texas Register* (27 TexReg 3747). The amendment to §19.403 is adopted without changes to the proposed text.

Justification for 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 DHS to adopt a model drug testing policy in its rules for nursing facility use.

DHS received no comments regarding adoption of the amendment and new section.

DHS made a formatting change to §19.423 to correct an error made by the *Texas Register* when this section was published.

The amendment and new section are adopted 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.

§19.423. Model Drug Testing Policy.

The Texas Department of Human Services (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 adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200203831
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: August 1, 2002
Proposal publication date: May 3, 2002
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 §106.107

The Texas Rehabilitation Commission (TRC) adopts an amendment to §106.107, concerning schedule of rates, without changes to the proposed text as published in the May 10, 2002, issue of the *Texas Register* (27 TexReg 3983) and will not be republished. The amendment is necessary to update the annual schedule rates.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, A7111.018 and A7111.023 and §111.0552(b) which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2002.

TRD-200203882
Sylvia F. Hardman
Deputy Commissioner of Legal Services
Texas Rehabilitation Commission
Effective date: July 11, 2002
Proposal publication date: May 10, 2002
For further information, please call: (512) 424-4050

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Final Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF NEW AND/OR ADJUSTED 2002 MODEL PRIVATE PASSENGER AUTOMOBILE PHYSICAL DAMAGE RATING SYMBOLS FOR THE TEXAS AUTOMOBILE RULES AND RATING MANUAL

The Commissioner of Insurance adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 2002 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. A-0502-15-I) was published in the May 17, 2002 issue of the *Texas Register* (27 TexReg 4371).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the 2002 model year of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Ref. No. A-0502-15-I, which are incorporated by reference into Commissioner's Order No. 02-0639.

The Commissioner of Insurance has jurisdiction over this matter pursuant to Insurance Code Articles 5.10, 5.96, 5.98 and 5.101.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with Insurance Code Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on the 60th day after publication of the notification of the Commissioner's action in the *Texas Register*.

TRD-200203923
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 21, 2002

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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.

Proposed Rule Reviews

Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas files this notice of intention to review Texas Administrative Code, Title 7, Part 1, Chapter 1, Subchapter A, (§§1.30-1.40 and §§ 1.101-1.107), relating to Regulated Loan Licenses, Subchapter D (§§1.401- 1.407), relating to Licenses, Subchapter E (§§1.501-1.505), relating to Interest Charges in Loans, Subchapter F (§§1.601-1.605), relating to Alternate Charges for Consumer Loans, Subchapter G (§§1.701-1.708), relating to Interest and other Charges on Secondary Mortgage Loans, Subchapter H (§§1.751-1.761), relating to Refunds in Precomputed Loans, and Subchapter I (§§1.801-1.811), relating to Insurance, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether reasons for adopting this chapter continue to exist. Final consideration of the rules review of this chapter is scheduled for the commission's meeting on August 16, 2002.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Leslie L. Pettijohn, Commissioner, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to leslie.pettijohn@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200203955
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Filed: June 24, 2002

Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 128. Permits for Contact Lens Dispensers.§§128.1 - 128.10.

This review is in accordance with the requirements of the Texas Government Code, §2001.039.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200204007
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 26, 2002

Texas State Board of Examiners of Psychologists

Title 22, Part 21

The Texas State Board of Examiners of Psychologists proposes to review Rules 465.1 - 465.10 (Rules of Practice), in accordance with the Appropriations Act, Section 167. As part of this review process, the Board proposes to amend the existing §465.1 (Definitions), and 465.9 (Competence) in accordance with the Appropriations Act, Section 167. The proposed amendments may be found in the Proposed Rules section of the *Texas Register*. The Board is not proposing any changes to existing Rules §465.2 through §465.8 and §465.10.

The Texas State Board of Examiners of Psychologists proposes to review Chapter 473. Fees, §§473.1-473.8, in accordance with the Appropriations Act, Section 167. The Board is not proposing any changes to existing Rules §473.1 through §473.8.

Comments on the proposals may be submitted to Kourtney D. McDonald, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Tower II, Suite 2-450, Austin, Texas 78701.

TRD-200203862
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Filed: June 19, 2002

Texas Workers' Compensation Commission

Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 49, concerning Procedures For Formal Hearings By The Board, Chapter 55, concerning Lump Sum Payments, Chapter 56, concerning Structured Compromise Settlement Agreements, Chapter 57, concerning Request For Case Folders And Certifications Of Actions Of The Board, and Chapter 59, concerning Notices Of Intention To Appeal, This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the rules contained in these chapters continues to exist and it proposes to readopt Chapters 49, 55, 56, 57, and 59.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on August 5, 2002, and submitted to Nell Cheslock, Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Chapter 49. Procedures For Formal Hearings By The Board

§49.5. Schedule of Hearings

§49.10 Timely Acceptance of Evidence

§49.15 Formal Statement of Position

§49.20 Request for Cancellation

§49.25 Delay or Postponement of Hearing

§49.30 Filing of Medical Bills

§49.35 Filing of Medical Reports and Records

§49.40 Carrier Attendance

§49.45 Contents of Formal Statement of Position

§49.50 Sanctions

§49.105 Procedures

§49.110 Commencement of Hearings

§49.115 Notice

§49.120 Special Statutory Notice

§49.125 Notice of Special Formal Hearing

§49.130 Personal Appearance Hearings in Austin

§49.131 Withdrawal of Attorney

§49.135 Use of Court Reporters

§49.140 Continuance

§49.145 Recess

§49.150 Complaint Specifications

§49.155 Documentary Evidence

§49.160 Filing of Formal Statement of Position

§49.165 Subpoenas and Subpoenas Duces Tecum

Chapter 55. Lump Sum Payments

§55.3 Request for Advance Payment of Compensation

§55.5 Lump Sum Payments

§55.10 Settlements Final When Approved

§55.15 Compromise Settlement Agreements

§55.20 Execution of Compromise Settlement Agreement

§55.25 Loss of an Eye

§55.30 Hearing Impairment

§55.35 Stipulation of Medical Payments

§55.40 Attorney's Signature

§55.45 Percent of Medical Impairment

§55.50 Attorneys Fees and Expenses

§55.55 Compromise Settlement Agreement To Set Aside Award

§55.60 Consent Withdrawn

§55.65 Withdrawal of Consent by Death

§55.75 Tender Payment Time Period

§55.80 Waiving of Approval Appearance

Chapter 56. -- Structured Compromise Settlement Agreements

§56.5 Definitions

§56.10 Form

§56.15 Execution

§56.20 Personal Appearance by Claimant

§56.25 Medical Benefits

§56.30 Consent of Parties--Withdrawal

§56.35 Attorney's Signature

§56.40 Attorney's Fees and Expenses

§56.45 Tender Payment Time Period

§56.50 Final When Approved

§56.55 Annuity Company

§56.60 Payments Guaranteed

§56.65 Cost of the Annuity

§56.70 Structured Settlement Agreement To Set Aside Award Chapter 57. Request For Case Folders And Certifications Of Actions Of The Board

§57.5 Request for Copies or Statistical Information

§57.10 Written Request for Public Information

§57.15 Telephone Request for Public Information

Chapter 59. Notices Of Intention To Appeal

§59.5 Filing of Notice

§59.10 Receipt of Notice

TRD-200203996
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: June 26, 2002

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 114, concerning Self-Insurance, Chapter 120, concerning Compensation Procedure - Employers, Chapter 126, concerning Benefits -- General Provisions Applicable To All Benefits, Chapter 128, concerning Benefits -- Calculation Of Average Weekly Wage, Chapter 140, Dispute Resolution -- General Provisions, and Chapter 144, concerning Dispute Resolution -- Arbitration. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the rules contained in these chapters continues to exist and it proposes to readopt Chapters 114, 120, 126, 128, 140 and 144.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on August 5, 2002, and submitted to Nell Cheslock, Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Chapter 114. Self-Insurance.

§114.1 Purpose

§114.2 Definitions

§114.3 Initial Application Form and Financial Information Requirements

§114.4 Security Requirements

§114.5 Excess Insurance Requirements

§114.6 Safety Program Requirements

§114.7 Certification Process

§114.8 Refusal to Certify an Employer

§114.9 Required Initial Safety Program Inspection

§114.10 Claims Contractor Requirements

§114.11 Audit and Inspection Program

§114.12 Required Annual Reports

§114.13 Required Notices to the Director

§114.14 Impaired Employer

§114.15 Revocation of Certificate of Authority to Self-Insure

Chapter 120. Compensation Procedure - Employers

§120.1 Employer's Record of Injuries

§120.2 Employer's First Report of Injury

§120.3 Employer's Supplemental Report of Injury

Chapter 126. Benefits -- General Provisions Applicable To All Benefits,

§126.1 Definitions Applicable to All Benefits

§126.2 Payment of Benefits to Minors

§126.3 Payment of Benefits to Legally Incompetent Persons

§126.4 Advance of Benefits Based on Financial Hardship

§126.5 Entitlement and Procedure for Requesting Required Medical Examinations

§126.6 Order for Required Medical Examination

§126.7 Suspension of Temporary Income Benefits Based On the Opinion of a Carrier-Selected Required Medical Examination Doctor

§126.8 Commission Approved Doctor List

§126.9 Choice of Treating Doctor and Liability for Payment

§126.11 Extension of the Date of Maximum Medical Improvement for Spinal Surgery

§126.12 Payment of Interest on Accrued but Unpaid Income Benefits

§126.13 Employer Initiation of Benefits and Reimbursement

Chapter 128 Benefits. Benefits - Calculation of Average Weekly Wage

§128.1 Average Weekly Wage: General Provisions

§128.2 Carrier's Presumption of Employee's Average Weekly Wage

§128.3 Average Weekly Wage Calculation for Full-Time Employees, and for Temporary Income Benefits for All Employees

§128.4 Average Weekly Wage Calculation for Part-Time Employees

§128.5 Average Weekly Wage Calculation for Seasonal Employees

§128.6 Average Weekly Wage Adjustment for Certain Employees Who Are Also Minors, Apprentices, Trainees, or Students

§128.7 Average Weekly Wage for School District Employees

Chapter 140. Dispute Resolution -- General Provisions

§140.1 Definitions

§140.2 Special Accommodations

§140.3 Expedited Proceedings

§140.4 Conduct and Decorum

§140.5 Correction of Clerical Error

Chapter 144. Dispute Resolution -- Arbitration

§144.1 Authority and Duties of Arbitrators

§144.2 Ex Parte Communications

§144.3 Delivery of Copies of Documents

§144.4 Election to Engage in Arbitration

§144.5 Statement of Disputes

§144.6 Assignment of Arbitrator

§144.7 Setting the Arbitration Proceeding

§144.8 Expediting Procedures

§144.9 Exchange of Evidence and Proposed Resolution

§144.10 Stipulations, Agreements, and Settlements

§144.11 Continuance

§144.12 Failure to Attend Arbitration

§144.13 Rights of Parties

§144.14 Usual Order of Proceedings

§144.15 Award of the Arbitrator

§144.16 Requesting a Copy of the Record

TRD-200203997
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: June 26, 2002

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Adopted Rule Reviews

Texas Department of Banking

Title 7, Part 2

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), has completed the review of Texas Administrative Code, Title 7, Chapter 21 (Trust Company Corporate Activities), Subchapters A through G, comprised of §§21.1-21.8, concerning fees and other provisions of general applicability; §21.23 and §21.24, concerning trust company chartering and powers; §21.31 and §21.32, concerning trust deposits; §21.41 and §21.42, concerning trust company offices; §21.51, concerning change of control; §§21.61-21.64 and §§21.67-21.76, concerning application for merger, conversion, or sale of assets; and §21.91 and §21.92, concerning certain charter amendments and certain changes in outstanding stock.

Notice of the review of Subchapters A through D was published in the March 15, 2002 issue of the *Texas Register* (27 TexReg 2083). Notice of the review of Subchapters E and F was published in the April 12, 2002 issue of the *Texas Register* (27 TexReg 3217). Notice of the review of Subchapter G was published in the May 3, 2002 issue of the *Texas Register* (27 TexReg 3789). No comments were received in response to the notices.

The department believes that the reasons for initially adopting these rules continue to exist. However, the department has determined that certain revisions are appropriate and necessary, including revisions to correct statutory references that changed as a result of codification. Proposed new, amended, and repealed sections in Chapter 21, with discussion of the justification for proposed changes, are published in this issue of the *Texas Register*.

Subject to the proposed new, amended, and repealed sections in Chapter 21, the commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections without changes in accordance with the requirements of Government Code §2001.039.

TRD-200203889
Everette D. Jobe
Certifying Official
Texas Department of Banking
Filed: June 21, 2002

♦ ♦ ♦

Texas State Board of Examiners of Psychologists

Title 22, Part 21

The Texas State Board of Examiners of Psychologists adopts its review of Chapter 470. Administrative Procedure §§470.1-470.24, in accordance with the Appropriations Act, Section 167. As part of this review process, the Board adopts new Board rules 470.7 (Computation of Time), 470.11 (Service in Non-Rulemaking Proceedings), and 470.18 (The Record) in accordance with the Appropriations Act, Section 167. The adopted new rules may be found in the Adopted Rules section of the *Texas Register*. In addition, the Board adopts the amendment to existing §470.8 (Informal Disposition of Complaints) and 470.21 (Disciplinary Guidelines) in accordance with the Appropriations Act, Section 167. The adopted amendments may be found in the Adopted Rules section of the *Texas Register*. The Board is not adopting any changes to existing Board rules §470.1 through §470.6, §470.10 through §470.19, and §470.24.

The Texas State Board of Examiners of Psychologists adopts its review Chapter 471. Renewals, §§471.1-471.6, in accordance with the Appropriations Act, Section 167. The Board is not adopting any changes to existing Board rules §471.1 through §471.6.

TRD-200203861
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Filed: June 19, 2002

♦ ♦ ♦

Texas Real Estate Commission

Title 22, Part 23

Chapter 531: Canons of Professional Ethics and Conduct for Real Estate Licensees (canons of ethics, consumer information form, discriminatory practices)

Chapter 533: Practice and Procedure (rulemaking, hearings and appeals)

Chapter 534: General Administration (public records and dishonored checks)

Chapter 537: Professional Agreements and Standard Contracts (use of standard contract forms)

The Texas Real Estate Commission adopts the review of Chapters 531, 533, 534, and 537 in accordance with the Texas Government Code, §2001.039, and the General Appropriations Act of 1999, Article IX, Section 167. In conjunction with this review, the agency amended §533.38. The adopted amendment was published in the June 21, 2002 issue of the *Texas Register* (27TexReg 5519). The agency has determined that with this change, the reasons for adopting the sections in Chapters 531, 533, 534, and 537 continue to exist.

TRD-200203924
Loretta DeHay
General Counsel
Texas Real Estate Commission
Filed: June 21, 2002

♦ ♦ ♦

Texas Water Development Board

Title 31, Part 10

Chapter 368. Flood Mitigation Assistance Program

Pursuant to the notice of proposed rule review published in the May 3, 2002 issue of the *Texas Register*, (27 TexReg 3790), the Texas Water

Development Board (board) has reviewed and considered for readoption, revision or repeal 31 TAC, Part 10, Chapter 368, Flood Mitigation Assistance Program, in accordance with the Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continues to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the rules are still necessary and readopts the sections because they govern the board's responsibilities for administering the program. As a result of the review, the board concurrently adopts amendments to §§368.1, 368.2, and 368.9. This completes our review of Chapter 368.

TRD-200203869
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: June 20, 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 §25.381(e)(7)(B)(i)

Credit Rating (if split ratings, use lower rating)		% of stockholder equity
S&P	Moody's	
AAA	Aaa2	3.00%
AAA-	Aaa3	3.00%
AA+	Aa1	2.95%
AA	Aa2	2.85%
AA-	Aa3	2.70%
A+	A1	2.55%
A	A2	2.35%
A-	A3	2.10%
BBB+	Baa1	1.80%
BBB	Baa2	1.40%
BBB-	Baa3	0.70%
Below BBB-	Below Baa3	Must use another form of security

Figure: 16 TAC §25.381(h)(6)(A)(iii)

Product	Peak Months (May-Sept.)	Off-Peak Months (Oct.-April)
Baseload	100%	90%
Gas-intermediate	50%	20%
Gas-cyclic	20%	10%
Gas-peaking	10%	2%

Figure 1: 16 TAC §25.381(h)(6)(C)(iii)

Bidders	Bids Next-To-Last Round	Last Round Bid	Awarded	Differential Between Rounds
A	4 – 10:50	3	3	1
B	6 – 10:20	6	6	0
C	3 – 10:44	2	2	1
D	3 – 10:59	None – 0	-	3
Total	**16**	11 (3 leftover)	**11** **(3 avail)**	
In this example, bidder "D" would receive the first unsubscribed entitlement and its differential would be reduced by one since it possesses the largest differential.				

Figure 2: 16 TAC §25.381(h)(6)(C)(iii)

Bidders	Bids Next-To-Last Round	Last Round Bid	Awarded	Differential Between Rounds
A	4 – 10:50	3	3	1
B	6 – 10:20	6	6	0
C	3 – 10:44	2	2	1
D	3 – 10:59	None - 0	**1**	**2**
Total	**16**	**11 (3 leftover)**	**12 (2 avail)**	
Since bidder "D" still contains the largest differential and there are still two unsubscribed entitlements, "D" will again be awarded an entitlement.				

Figure 3: 16 TAC §25.381(h)(6)(C)(iii)

Bidders	Bids Next-To-Last Round	Last Round Bid	Awarded	Differential Between Rounds
A	4 – 10:50	3	3	1
B	6 – 10:20	6	6	0
C	3 – 10:44	2	2	1
D	3 – 10:59	None - 0	**2**	**1**
Total	**16**	**11 (3 leftover)**	**13 (1 avail)**	

For the last remaining entitlement there are three bidders that all have a differential of one: "A", "C", and "D". Therefore, a tie exists and the timestamp tiebreaker will be used to determine which of the three bidders should receive the entitlement. Based on the timestamps bidder "C" would receive the last entitlement, because it has the earliest time stamp in the next-to-last round. The completed auction would appear as follows:

Figure 4: 16 TAC §25.381(h)(6)(C)(iii)

Bidders	Bids Next-To-Last Round	Last Round Bid	Awarded	Differential Between Rounds
A	4 – 10:50	3	3	1
B	6 – 10:20	6	6	0
C	3 – 10:44	2	**3**	0
D	3 – 10:59	None - 0	2	1
Total	**16**	**11 (3 leftover)**	**14 (0 avail)**	

Figure: 16 TAC §25.381(h)(6)(C)(vi)

Product	Peak Months (May - Sept.)	Off-Peak Months (Oct. - April)
Baseload	100%	90%
Gas-intermediate	50%	20%
Gas-cyclic	20%	10%
Gas-peaking	10%	2%

Figure: 16 TAC §26.130(d)(3)(B)

Customer billing name: ______________________________

Customer billing address: ______________________________

Customer street address: ______________________________

City, state, zip code: ______________________________

If applicable, name of individual legally authorized to act for customer:

____

____

Relationship to customer: ______________________________

Telephone number of individual authorized to act for customer:

____

____

Only one telephone company may be designated as my preferred carrier for each type of service for each telephone number.

______ By initialing here and signing below, I am authorizing (new telecommunications utility) to become my new telephone service provider in place of (current telecommunications utility) for **local** telephone service. I authorize (new telecommunications utility) to act as my agent to make this change happen, and direct (current telecommunications utility) to work with the new provider to make the change.

______ By initialing here and signing below, I am authorizing (new telecommunications utility) to become my new telephone service provider in place of (current telecommunications utility) for **local toll** telephone service. I authorize (new telecommunications utility) to act as my agent to make this change happen, and direct (current telecommunications utility) to work with the new provider to make the change.

______ By initialing here and signing below, I am authorizing (new telecommunications utility) to become my new telephone service provider in place of (current telecommunications utility) for **long distance** telephone service. I authorize (new telecommunications utility) to act as my agent to make this change happen, and direct (current telecommunications utility) to work with the new provider to make the change.

I understand that I may be required to pay a one-time charge to switch providers and may consult with the carrier as to whether the charge will apply. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge. I also understand that my new telephone company may have different calling areas, rates, and charges than my current telephone company, and I am willing to be billed accordingly.

Telephone number(s) to be changed: ____________________________

Initial here ________ if you are listing additional telephone numbers to be changed.

I have read and understand this Letter of Agency. I am at least eighteen years of age and legally authorized to change telephone companies for services to the telephone number(s) listed above.

Signed: ________________________________ Date _________________

Figure: 16 TAC §105.10(c)(1)

MSRP	$20,000
Less Dealer Discount	1,000
Sale Price	$19,000

Figure: 16 TAC §105.10(c)(2)

Advertised Price	$18,000
Less Rebate	500
Sale Price	$17,500

Figure: 16 TAC §105.10(c)(3)

MSRP	$20,000
Less Rebate	500
Less Dealer Discount	500
Sale Price	$19,000

Introduction

These *Guidelines for Qualification of Agricultural Land in Wildlife Management Use* will discuss the requirements that land must meet to qualify for wildlife management use, how to value this land, and each of the seven wildlife management activities mandated by state law.

In 1995, Texas voters approved Proposition 11, which amended Article VIII, Section 1-d-1 of the Texas Constitution to permit agricultural appraisal for land used to manage wildlife. H.B. 1358 implemented the constitutional amendment by making wildlife management an agricultural use that qualifies the land for agricultural appraisal.

In 2001, the Legislature passed H.B. 3123 requiring the Texas Parks and Wildlife Department to develop and the Comptroller to adopt rules for the qualification of agricultural land in wildlife management use. These guidelines and Chapter 9, Subchapter F, Texas Administrative Code, constitute the rules, as required by Section 23.52(g), Tax Code. The Texas Administrative Code language specifically addresses qualification of land partitioned from a previously qualified larger tract of real property qualified for 1-d-1 appraisal as wildlife management land.

The Tax Code, Chapter 23, Subchapter D, addresses the requirements for landowners to qualify their land for agricultural appraisal and also instructs county appraisal districts on how to appraise qualified agricultural land. Land used for wildlife management must meet all the legal requirements of land qualified for agricultural appraisal. Those requirements, however, are outside the scope of these guidelines. The Comptroller publishes a *Manual for the Appraisal of Agricultural Land* that discusses in detail the qualification of land for agricultural appraisal, the rollback tax penalty for change of use and appraisal of agricultural land.[1]

Land on which the owner engages in wildlife management and that meets other requirements for agricultural appraisal is qualified for agricultural appraisal and is technically in agricultural use. To simplify terms, however, this booklet refers to agricultural land used for wildlife management as land in *wildlife management use*.

The Tax Code, Section 23.51(1) defines qualified agricultural land as:

Land that is currently and principally devoted to agricultural use to the degree of intensity typical for the area and has been used for agriculture or timber for at least five of the preceding seven years.[2]

Section 23.51(2), Tax Code, includes wildlife management in the definition of *agricultural uses* of land. Section 23.51(7), Tax Code, defines wildlife management as:

Actively using land that at the time the wildlife management began was appraised as qualified open-space land under this subchapter in at least three of the following ways to propagate a sustaining breeding, migrating, or wintering population of indigenous wild animals for human use, including food, medicine, or recreation:

(A) habitat control;
(B) erosion control;
(C) predator control;
(D) providing supplemental supplies of water;
(E) providing supplemental supplies of food;
(F) providing shelters; and
(G) making census counts to determine population.

Part One discusses the qualification of agricultural land used for wildlife management. Part Two discusses in detail the seven wildlife management activities listed in Section 23.51(7).

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[1] To obtain a copy of Manual for the Appraisal of Agricultural Land, please write the Comptroller, Property Tax Division, P. O. Box 13528, Austin, Texas 78711-3528.

[2] Land qualified for timber appraisal is not eligible for wildlife management use. See discussion on page 3.

Part I: Qualifying Land for Wildlife Management Use

Wildlife Management Use Requirements

Land must be qualified for Chapter 23, Subchapter D (1-d-1) Agricultural Appraisal

The first requirement for wildlife management use qualification is purely technical and is not related to the land's actual use to manage wildlife. The law restricts the land that may qualify for wildlife management use. To qualify for agricultural appraisal under the wildlife management use, land must be qualified for agricultural appraisal under Chapter 23, Subchapter D, Tax Code (also called 1-d-1 or open space agricultural appraisal), at the time the owner changes use to wildlife management use.

In other words, the land must have been qualified and appraised as agricultural land during the year before the year the owner changes to the wildlife management use. For example, an owner who wishes to qualify for wildlife management use in 2002 must be able to show the land was qualified for and appraised as agricultural land in 2001.

Land qualified for timber appraisal is not eligible to qualify for wildlife management use. Timber land is qualified under Tax Code, Chapter 23, Subchapter E. The law limits wildlife management use to land qualified under Subchapter D of Chapter 23. Similarly, land qualified for agricultural appraisal under Article VIII, Section 1-d, Texas Constitution and Chapter 23, Subchapter C, Tax Code, (also called 1-d agricultural appraisal) is not eligible for wildlife management use.

Land must be used to generate a sustaining breeding, migrating, or wintering population of indigenous wild animals.

The second requirement for qualified wildlife management use is that the land must be used to propagate a sustaining breeding, migrating or wintering population of *indigenous* wild animals.

An *indigenous* animal is a native animal that originated in or naturally migrates through an area and that is living naturally in that area—as opposed to an exotic animal or one that has been introduced to the area. In this context, an *indigenous* animal is one that is native to Texas. (Contact the Texas Parks and Wildlife Department to determine if an animal species is considered *indigenous.*)

Land may qualify for wildlife management use if it is instrumental in supporting a sustaining breeding, migrating or wintering population. A group of animals need not permanently live on the land, provided they regularly migrate across the land or seasonally live there.

A *sustaining breeding* population is a group of indigenous wild animals that is large enough to live independently over several generations. This definition implies that the population will not die out because it produces enough animals to continue as a viable group. The Texas Parks and Wildlife Department may be able to provide information to help determine the number of animals of a particular species that must group together to sustain the population.

A *migrating* population of indigenous wild animals is a group of animals moving between seasonal ranges. A *wintering* population of indigenous wild animals is a group of animals living on its winter range.

The indigenous wildlife population must be produced for human use.

The law requires an owner to propagate the wildlife population for human use. Human use may include food, medicine or recreation. Land will not qualify unless the owner propagates the population of wild animals for a human purpose.

The use of animals for food and medicine is self explanatory. These uses result in a product and require active participation. A recreational use may be either active or passive and may include any type of use for pleasure or sport. Bird watching, hiking, hunting, photography and other non-passive recreational or hobby-type activities are qualifying recreational uses. The owner's passive enjoyment in owning the land and managing it for wildlife also is a qualifying recreational use.

Is the land used for three or more of the following activities?

Under the law, an owner must perform at least three of seven listed wildlife management activities on the land. An owner may qualify by doing more than three, but may not engage in fewer than three of the activities. These activities are explained in detail in Part Two of this booklet, but a short summary of each management activity listed in the law appears below.

- *Habitat Control (Habitat Management).* A wild animal's habitat is its surroundings as a whole, including plants, ground cover, shelter and other animals on the land. Habitat control—or habitat management—means actively using the land to create or promote an environment that is beneficial to wildlife on the land.
- *Erosion Control.* Any active practice that attempts to reduce or keep soil erosion to a minimum for the benefit of wildlife is erosion control.
- *Predator Control (Predator Management).* This term means practices intended to manage the population of predators to benefit the owner's target wildlife population. Predator control is usually not necessary unless the number of predators is harmful to the desired wildlife population.
- *Providing Supplemental Supplies of Water.* Natural water exists in all wildlife environments. Supplemental water is provided when the owner actively provides water in addition to the natural sources.
- *Providing Supplemental Supplies of Food.* Most wildlife environments have some natural food. An owner supplies supplemental food by providing food or nutrition in addition to the level naturally produced on the land.
- *Providing Shelter.* This term means actively creating or maintaining vegetation or artificial structures that provide shelter from the weather, nesting and breeding sites or "escape cover" from enemies.
- *Making Census Counts to Determine Population.* Census counts are periodic surveys and inventories to determine the number, composition or other relevant information about a wildlife population to measure if the current wildlife management practices are serving the targeted species.

Agricultural Use Requirements

Chief appraisers should remember that an owner's wildlife management use must meet all the requirements to qualify for agricultural use, defined in Section 23.51(1) Tax Code. Below is a brief discussion of the principal issues involved in agricultural use of land used for wildlife management. For a thorough discussion of these components, please refer to the *Manual for the Appraisal of Agricultural Land.*

Primary Use

The law requires agriculture to be the *primary use* of the land. Wildlife management is an agricultural use under the law. The *primary use* requirement is particularly important for land used to manage wildlife. For example, land devoted to wildlife management can be used as a residence for the owner, but the land will not qualify if residential use—and not wildlife management—is the land's primary use.

A chief appraiser must gather and consider all the relevant facts to determine if the land is primarily used to manage wildlife. Some important questions are listed below.

- Is the owner implementing an active, written, wildlife management plan that shows the owner is engaging in activities necessary to preserve a sustaining breeding population on the land? An owner's management plan is required and must be completed on a form supplied by the Texas Parks

and Wildlife Department for each tract of land for which qualification is sought. A plan is clear evidence of the owner's use of the land primarily for wildlife management. A good plan will usually list wildlife management activities with the appropriate seasons and/or sequence of events.

- Do the owner's management practices emphasize managing the population to ensure its continued existence over another use of the land? For example, does the owner refrain from allowing visitors on the land in years when the habitat is sensitive?
- Has the owner engaged in the wildlife management practices necessary to sustain and encourage the population? In some cases, an owner must control predators and supply water when water is not adequate, supply shelter and food when natural food production is not adequate and establish vegetation to control erosion. In other cases, less active management may maintain and encourage the growth of wildlife.
- Are there improvements—appropriate fencing, for example—necessary to control or sustain the wildlife population?

An owner may use land for purposes that are secondary to the primary use—wildlife management—if the secondary use is compatible with the primary use. For example, an owner may engage in wildlife management and also operate a business in which bird watchers stay on the land overnight and watch for birds during the day (known as a bird and breakfast operation). This activity is secondary to the primary activity of managing the wildlife, but it is not incompatible with the wildlife management use. General principles of primary and secondary use are discussed in the *Manual for the Appraisal of Agricultural Land.*

Degree of Intensity for Wildlife Management Use

The degree of intensity standard for wildlife management land is determined in the same way as other agricultural uses. Wildlife management land usually requires a management of the land that encourages long-term maintenance of the population.

A chief appraiser may ask questions such as whether fencing is typical in the area for managing the target wildlife population, and what is the typical population size? In addition, the chief appraiser should ask how many of the following activities are typical in the area (or which are typical for the area during some parts of the year): habitat management; predator management; erosion control; providing supplemental supplies of food or water; providing shelter and engaging in census counts.

Because wildlife management activities are elements of the degree of intensity determination, an owner must be engaging in three of seven activities to the degree of intensity typical for the area. General principles of the degree of intensity test are discussed in the *Manual for the Appraisal of Agricultural Land.* The Texas Parks and Wildlife Department has developed regional wildlife management plans detailing specific management activities appropriate for each ecological area. (See page 8.)

Historical Use Requirement

Land must have qualified for 1-d-1 agricultural use and been appraised as 1-d-1 agricultural use in the year before the owner changes its use to wildlife management. Consequently, the time period test to determine if the land has been used for agriculture for five of the preceding seven years is usually not necessary.

Determining Appraised Values

The wildlife management use is a *revenue neutral* use of land. *The owner who switches from another agricultural use to wildlife management use must pay the same amount of property taxes that would have been paid if the land had remained in its former agricultural use.*

Land qualified for wildlife management should be placed in a wildlife management category, but should have the same appraised value as before conversion to wildlife management use. For example, if the land was in Irrigated Cropland I before the owner switched its use to wildlife management, the land should be placed in the wildlife management category, but will be appraised at the Irrigated Cropland I value.

If that land use category's value subsequently changes in the county, the new category values would apply to those tracts under wildlife management use in that category.

Notifying the Chief Appraiser of Change to Wildlife Management Use

The law does not require an annual application for agricultural use once the land has qualified. Because only 1-d-1 qualified land may qualify for wildlife management use, an owner who changes to this use need not reapply for agricultural appraisal. The law, however, does require an owner who changes the category of agricultural use to notify the chief appraiser of the change of use.

When an owner changes agricultural uses to wildlife management, the owner must notify the chief appraiser in writing before May 1 of the year in which the owner wants to qualify under wildlife management use. The chief appraiser will then determine if the land qualifies for wildlife management use. Likewise, an owner must notify the chief appraiser if land is switched from wildlife management use to another qualifying agricultural use.

Owners should contact their county appraisal districts about notification requirements before changing the use of small portions of their land from one qualified agricultural use to another. For example, if an owner converts a part of a 1,000-acre farm to wildlife management use by creating a pond for wildlife, the owner should ask about the appraisal district's need for notification and documentation requirements.

Part II: Wildlife Management Activities, Practices and Definitions

Among the statutory requirements for property owners to qualify their agricultural land for wildlife management use is a mandate that owners perform at least three of seven wildlife management activities, which were briefly summarized in Part One.

- Habitat control (habitat management);
- Erosion control;
- Predator control (predator management);
- Providing supplemental supplies of water;
- Providing supplemental supplies of food;
- Providing shelters; and
- Making census counts to determine population.

Below is a detailed explanation of the kinds of practices that chief appraisers should examine to determine if property owners are satisfying the law's requirements. Some of the practices listed may require permits from federal, state or local governments. For example, before improving a wetland or controlling grackles or cowbirds, an owner may need a permit. Or before a planned burning, an owner may be required to provide a map of the acreage. Property owners should contact the appropriate legal authorities for permit information if they have any questions or concerns about engaging in any of the practices listed above.

Wildlife Management Plan

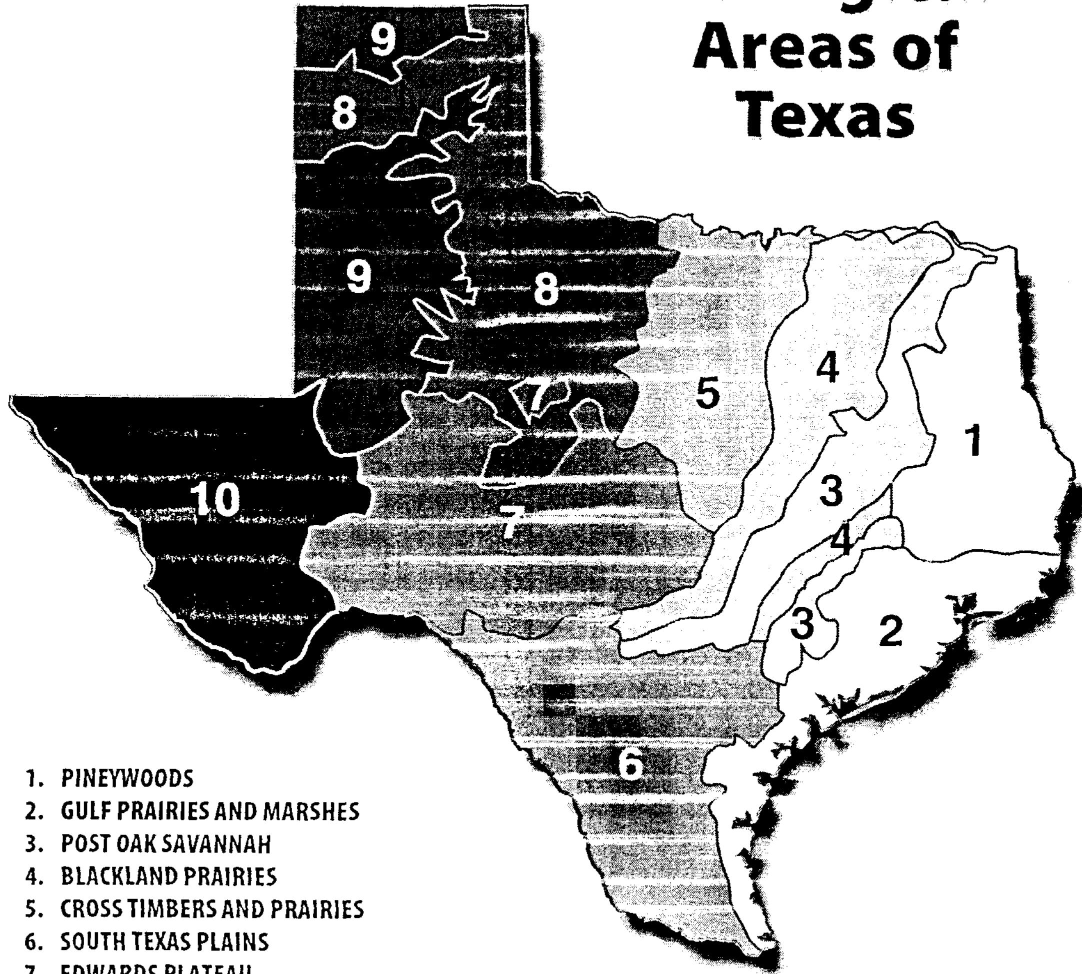
A *Wildlife Management Plan* gives information on the property's history and current use, establishes landowner goals for the property and provides a set of activities designed to integrate wildlife and habitat improvement. Such a plan is clear evidence that the owner's use of the land is primarily for wildlife management.

As stated in Part 1, an owner must provide a wildlife management plan to the appraisal district . The plan must be completed on a Texas Parks and Wildlife Department form for each tract for which wildlife management use qualification is sought. The activities and practices contained in the plan must be consistent with the activities and practices recommended in the model Texas Parks and Wildlife Department regional management plan for the region in which the property is located.

Landowners may formulate their own plans. Assistance or review, however, is available from the Texas Parks and Wildlife Department, the Texas Agricultural Extension Service, the United States Department of Agriculture's Natural Resource Conservation Service, the Texas Forest Service or other qualified wildlife biologists.

A complete plan is likely to include elements of all seven listed wildlife management activities. All activities and practices should be designed to overcome deficiencies that limit wildlife or harm their habitats. Each one of the activities listed in Part Two should be practiced routinely or consistently as part of an overall habitat management plan. For example, scattering seed corn sporadically would not qualify as providing supplemental supplies of food under these guidelines, and occasionally placing barrels of water in a pasture would not meet the requirements for providing supplemental supplies of water.

In addition, some activities that are appropriate for certain regions of Texas would be inappropriate in others. For example, some areas of East Texas may not require providing supplemental pond water for wildlife. And there may be no need for supplemental cover in South Texas brush. The Texas Parks and Wildlife Department has developed regional wildlife management plans, listing the activities appropriate to Texas' ten ecological regions. The regions are:


Ecological
Areas of
Texas
9
8
9
8
7
5
4
1
3
4
3
2
10
7
6
1. PINEYWOODS
2. GULF PRAIRIES AND MARSHES
3. POST OAK SAVANNAH
4. BLACKLAND PRAIRIES
5. CROSS TIMBERS AND PRAIRIES
6. SOUTH TEXAS PLAINS
7. EDWARDS PLATEAU
8. ROLLING PLAINS
9. HIGH PLAINS
10. TRANS-PECOS, MOUNTAINS AND BASINS

1. Pineywoods
2. Gulf Prairies and Marshes
3. Post Oak Savannah
4. Blackland Prairies
5. Cross Timbers and Prairies
6. South Texas Plains
7. Edwards Plateau
8. Rolling Plains
9. High Plains
10. Trans-Pecos, Mountains and Basins.

Habitat Control (Habitat Management)

A wild animal's habitat is its surroundings as a whole, including plants, ground cover, shelter and other animals on the land. Habitat control—or habitat management—means actively using the land to create or promote an environment that benefits wildlife on the land.

Activities that contribute to habitat control or management include:

- grazing management;
- prescribed burning;
- range enhancement;
- brush management;
- forest management;
- riparian management and improvement;
- wetland improvements;
- habitat protection for species of concern;
- managing native, exotic and feral species; and
- wildlife restoration.

Grazing management means shifting livestock and grazing intensity to increase food and animal cover or to improve specific animals' habitat. Grazing management focuses on: 1) the kind and class of livestock grazed; 2) stocking rates; 3) periodic rest for pastures by controlling grazing intensity; and/or 4) excluding livestock from sensitive areas to promote vegetation protection and recovery or to eliminate competition for food and cover.

Deferred grazing can last up to 2 years. Seasonal stocker operations also may be appropriate. Supplemental livestock water—provided by earthen tanks or wells—may be useful when implementing grazing rotation.

Appropriately designed fencing can play an important role in grazing rotation plans. Fencing also can be used to improve or protect sensitive areas, woodlands, wetlands, riparian areas and spring sites. Property owners should review their fencing practices and grazing plans annually to ensure they meet the overall wildlife management goals.

Prescribed burning is defined as the planned application of fire to improve habitat and plant diversity, to increase food and cover or to improve particular species' habitats. If the owner has a wildlife management plan, that plan should indicate the frequency of planned burnings and the minimum percentage of acreage to be burned. A plan may designate the areas to be protected or excluded from burning, but should remain flexible during periods when conditions are not favorable for burning such as during periods of drought.

Range enhancement means to establish native plants—such as grasses and forbs (weeds and wildflowers)—that provide food and cover for wildlife or help control erosion. Protecting, restoring and managing native prairies also is considered range enhancement.

The plants chosen and the methods for establishing the plants should be appropriate to the county. Non-native species are generally not recommended, but if required for a specific purpose, non-native species should not exceed 25 percent of the seeding mix.

The seeding mixtures should provide for maximum native plant diversity. Many broadleaf plants, such as weeds and wildflowers, provide forage for wildlife and/or seed production. Owners should encourage weed and wildflower species by using the methods appropriate to native rangelands, land devoted to the federal Conservation Reserve Program and improved grass pastures (for example, Coastal Bermuda). Some periodic noxious weed control may be necessary in fields converted to native rangeland to help establish desirable vegetation.

Brush management may involve maintaining, establishing or selectively removing or suppressing targeted woody plants species (including exotics) to encourage the growth of desirable trees, shrubs, grasses and forbs for forage and nesting or protective cover for selected wildlife species. Brush management also includes keeping the proper kind, amount and distribution of woody cover for particular species.

A useful brush management plan should examine wildlife cover requirements, soil types, slope angle and direction, soil loss and erosion factors and plans to control reinvasion as part of an overall wildlife management plan. This practice also should focus on retaining snags to provide cover and nesting sites for cavity-nesting animals. In addition, herbicides, if used, should be used in strict accordance with label directions.

In some areas, where brushy cover is limited, property owners may establish native tree and shrub species to provide food, corridors and/or shelter using appropriate plant species and methods.

Forest management involves establishing, maintaining, harvesting, selectively removing or suppressing trees or woody species (including exotics) to allow for the growth of desirable trees, shrubs, grasses, and forbs for forage and nesting or protective cover for selected species. Forest management activities also include keeping the proper kind, amount and distribution of woody cover for selected animal species.

As with brush management mentioned above, this practice also includes retaining snags to provide cover and nesting sites for cavity-nesting animals. Forest management activities include pre-commercial thinning or non-commercial thinning, which involves reducing the stocking levels in a stand to increase the sunlight that reaches the ground to increase vegetation or plants in the understory.

Property owners should establish native tree and shrub species to provide food, corridors and/or shelter using species and methods appropriate to the county. Owners should attempt to restore important forested habitats including bottomland hardwoods, longleaf pine, bogs, mixed pine/hardwood areas and upland hardwoods. Owners also should avoid breaking up large forested habitats for some wildlife species.

Riparian management and improvement focuses on annually and/or seasonally protecting the vegetation and soils in riparian areas (low areas on either side of stream courses). Riparian management and improvements can include: providing livestock alternate watering sites; deferring livestock grazing in pastures with riparian areas during critical periods; excluding livestock from pastures with riparian areas; and fencing to exclude or provide short duration livestock grazing.

Property owners should attempt to restore important forested habitats including bottomland hardwoods, bogs, mixed pine/hardwood areas and turkey roost sites and avoid breaking up large forested habitats in riparian areas.

Wetland improvements provide seasonal or permanent water for roosting, feeding or nesting for wetland wildlife. This practice involves creating, restoring or managing shallow wetlands, greentree reservoirs, playa lakes and other moist soil sites.

Habitat protection for species of concern refers to managing land to provide habitat for an endangered, threatened or rare species. Habitat protection includes managing, or developing additional areas for protecting nesting sites, feeding areas and other critical habitat limiting factors. This protection can be provided by fencing off critical areas, by managing vegetation for a particular species, by maintaining firebreaks to ensure critical overstory vegetation and by annually monitoring the species of concern. Any broad-scale habitat management for migrating, wintering, breeding neotropical birds (primarily songbirds) should follow the specific guidelines provided in the Texas Parks and Wildlife Department's management plans for each ecological region. Contact the Texas Parks and Wildlife Department or follow specifically approved management guidelines before practicing activities designed to protect endangered species.

Managing native, exotic and feral species involves controlling the grazing and the browsing pressure from native and non-native wildlife, particularly white-tailed deer and exotic ungulates, such as axis

deer. This practice is designed to prevent overuse of desirable plant species and to improve the habitat and plant diversity for native animals.

To ensure that an owner's objectives are met and that the animals are not exceeding the habitat's carrying capacity, owners should monitor harvesting of animals and vegetation use over time. Owners also may control other exotic and feral animals to improve the habitat and reduce the negative effect on native wildlife. (Feral animals are previously domesticated animals that have become wild.)

In addition, owners should selectively remove or control exotic vegetation affecting native habitats and wildlife over a period of time (for example, large stands of naturalized salt cedar, Chinese tallow, weeping lovegrass, etc.). Owners also should convert tame pasture grasses (such as large areas of coastal bermuda) to native vegetation.

Wildlife restoration simply means 1) restoring and improving a habitat to good condition for targeted species and 2) reintroducing and managing a TPWD-approved native species within a habitat's carrying capacity as part of a TPWD-approved restoration area.

Erosion Control

Any active practice that attempts to reduce or keep soil erosion to a minimum for wild animals' benefit is erosion control. Some erosion control practices include:

- pond construction;
- gully shaping;
- streamside, pond and wetland revegetation;
- establishing native plants;
- dike, levee construction or management; and
- water diversion.

Pond construction is defined as building a permanent water pond to prevent, stop or control erosion as an approved Natural Resource Conservation Service (NRCS) watershed project while providing habitat diversity and benefiting wildlife. Whenever possible, owners should use ponds to help create or restore shallow water areas as wetlands and for water management.

Gully shaping involves reducing erosion rates on severely eroded areas by smoothing to acceptable grades and re-establishing vegetation. An area should be seeded with plant species that provide food and/or cover for wildlife.

Streamside, pond and wetland revegetation means revegetating areas along creeks, streams, ponds and wetlands to reduce erosion and sedimentation, stabilize streambanks, improve plant diversity and improve the wildlife value of sensitive areas. Some revegetation practices include:

- building permanent or temporary fences to exclude, limit or seasonally graze livestock to prevent erosion;
- using hay (native, when possible) to slow and spread water runoff in areas where vegetation has been recently re-established;
- establishing plant buffer areas or vegetative filter strips along water courses or other runoff areas;
- installing rip-rap, dredge spoil, or other barrier material along embankments to prevent erosion and protect wildlife habitat; and
- establishing stream crossings to provide permanent low water crossings to reduce or prevent erosion.

Establishing native plants on critical areas is one method of controlling erosion. These plants also can provide food and/or cover for wildlife and restore native habitat. Some of the ways to establish these plants are listed below.

- Establish and manage wind breaks/shelterbelts by planting multi-row shelterbelts (at least four rows that are 120 feet wide by 1/4 mile), renovate old shelterbelts (re-fence, root-prune and replace dead trees) and establish shrub mottes.
- Establish perennial vegetation on circle irrigation corners by revegetating at least every other corner to reduce erosion and sedimentation, improve plant diversity and improve wildlife habitat.
- Plant permanent vegetation on terraces and field borders to reduce erosion, improve plant diversity and improve wildlife habitat.
- Conserve tillage/no-till farming practices by leaving waste grain and stubble on the soil surface until the next planting season to provide supplemental

food or cover for wildlife, control erosion and improve the soil tilth.

- Manage Conservation Reserve Program (CRP) cover by maintaining perennial cover established under the CRP on erodible sites using proper management techniques such as haying, prescribed grazing or burning.

Dike, levee construction or management is a way to establish and maintain wetlands or slow runoff to control or prevent erosion and to provide habitat for wetland-dependent wildlife. Levee management may include reshaping or repairing damage caused by erosion and revegetating levee areas to reduce erosion and sedimentation and stabilize levees. This practice may include fencing to control and manage grazing use.

Water diversion systems also can be installed to protect erodible soils and divert water into wetlands to provide habitat for resident and migratory water birds and wetland-dependent species.

Predator Management

This term refers to practices intended to manage the population of predators to benefit the owner's target wildlife population. Predator control is usually not necessary unless the number of predators is harmful to the desired wildlife population. Predator control and management should not be counted as one of the seven wildlife management activities necessary to qualify for agricultural use appraisal unless it is part of a comprehensive wildlife management scheme or plan. Some types of predator management and/or control are:

- mammal predator control;
- fire ant control;
- brown-headed cowbird control; and
- grackle or starling control.

Mammal predator control may be necessary to increase the survival of the targeted species. Key native predator species may include: coyotes; raccoons; bobcats and mountain lions; while exotic predators may include wild house cats, wild dogs and wild hogs.

Fire ant control (imported red fire ants) can be used to protect native wildlife species or their food base. Treatments should comply with the label instructions and should cover at least 10 acres or one tenth of an infested area each year—whichever is more.

Controlling brown-headed cowbirds to decrease nest parasitism of targeted neotropical bird species (for example, endangered songbirds) also may be part of an overall planned program.

Grackle/starling control can be undertaken as part of a planned program to reduce bird diseases and overcrowding, which can harm the population of white-winged dove and/or other neotropical birds.

Providing Supplemental Water

Natural water exists in all wildlife environments. Supplemental water is provided when the owner actively provides water in addition to the natural sources. This category of wildlife management activity includes providing supplemental water in habitats where water is limited or redesigning water sources to increase its availability to wildlife. Wildlife water developments are in addition to those sources already available to livestock and may require protection from livestock. Some examples of recommended practices include:

- marsh or wetland restoration or development;
- managing well, trough and windmill overflow; and
- spring development and/or improvements.

Marsh or wetland restoration or development can provide supplemental water in the form of shallow wetlands for wetland-dependent wildlife, even in areas where inadequate water does not limit wildlife. Owners may include seasonally available water such as:

- greentree reservoirs;
- specific shallow roost pond development;
- seasonally flooded crops and other areas;
- moist soil management;
- cienega (desert marsh) restoration, development and protection; and
- maintaining water in playa lakes.

Based on the wildlife's needs and the suitability of the property, managing water levels annually is desirable. To be effective, a minimum of at least one

marsh/wetland should be restored or developed every five years.

Managing well, trough and windmill overflow can provide supplemental water for wildlife and provide habitat for wetland plants. Owners also may drill wells if necessary and/or build pipelines to distribute water. Building devices—known as wildlife water guzzlers—to collect rainfall and/or runoff for wildlife in areas where water is limited also helps protect wildlife, but these devices must be a part of an overall habitat management program.

Spring development and/or improvements can be designed to protect the immediate area surrounding a spring. Excluding and/or controlling livestock around springs may help to maintain native plants and animal diversity. Other ways to protect areas include moving water through a pipe to a low trough or a shallow wildlife water overflow, making water available to livestock and wildlife while preventing degradation of the spring area from trampling.

Improvements also could include restoring a degraded spring by selectively removing appropriate brush and revegetating the area with plants and maintaining the restored spring as a source of wildlife water. Maintaining critical habitat, nesting and roosting areas for wildlife and preventing soil erosion must be considered when planning and implementing brush removal. This practice should be planned and implemented gradually and selectively over a period of time.

Providing Supplemental Food

Most wildlife environments have some natural food. An owner supplies supplemental food by providing food or nutrition in addition to the level naturally produced on the land. *Grazing Management, Prescribed Burning* and *Range Improvement* can be used to provide supplemental food. (For information on these activities, see pages 9-10.) Other ways to provide supplemental food include:

- food plots;
- feeder and mineral supplements; and
- managing tame pasture, old fields and croplands.

Food plots are one way to establish locally adapted forage to provide supplemental foods and cover during critical periods of the year. Livestock should be generally excluded from small food plots. The shape, size, location and percentage of total land area devoted to food plots should be based on the requirements of the targeted species.

Feeders and mineral supplements also can help dispense additional food to selected wildlife species during critical periods. Feeders should not be used except to control excessive numbers of deer and/or exotic ungulates as defined within a comprehensive wildlife management plan with a targeted harvest quota that is regularly measured. Harmful aflatoxin in feed should not exceed 20 parts per billion.

Mineral supplements also may be supplied to wildlife in several ways, however, this practice must be a part of an overall habitat management plan that addresses all animal groups and considers the habitat's carrying capacity.

Managing tame pasture, old fields and croplands can increase plant diversity, provide supplemental food and forage and gradually help convert the land to native vegetation. Recommended practices may include:

- overseeding or planting cool season and/or warm season legumes (for example, clovers, vetches and peas) and/or small grains in pastures or rangeland;
- using plants and planting methods appropriate to the county;
- shallow tillage (discing) that encourages habitat diversity, the production of native grasses and forbs or increases bare ground feeding habitat for selected species; and
- no till or minimum till agricultural practices that leave waste grain and stubble on the soil surface until the next planting season—which provide supplemental food or cover, control erosion and improve soil tilth.

Legumes should be planted annually until all pastures are shifted to native vegetation.

Providing Supplemental Shelter

This term means actively creating or maintaining vegetation or artificial structures that provide shelter from the weather, nesting and breeding sites or "escape cover" from enemies. The best shelter for wildlife can be provided by a well managed habitat. Some practices listed below provide types of shelter that may be unavailable in the habitat:

- installing nest boxes and bat boxes;
- brush piles and slash retention;
- managing fence lines;
- managing hay meadow, pasture or cropland;
- half-cutting trees and shrubs;
- establishing woody plants and shrubs; and
- developing natural cavities and snags.

Installing nest boxes and bat boxes in the proper numbers and locations to provide nests or dens for selected species when necessary should be consistent with the habitat needs of the target species.

Brush piles and slash retention can provide additional wildlife cover and protection in habitats where inadequate natural cover limits the growth of a selected species. Planned placement of brush piles and slash retention—leaving dead brush on the ground where it was cut or uprooted—also can protect seedlings of desirable plant species. In addition, stacking posts or limbs in tepees can provide cover for small game and other wildlife in open areas.

Fence line management, which maintains or allows trees, shrubs, forbs and grasses to grow around fence lines, can provide both food and cover. This practice should only be used where cover is insufficient in the habitat, i.e. cropland or tame pasture.

Hay meadow, pasture or cropland management can be useful tools in wildlife management. Owners should postpone mowing/swathing hay fields until after the peak of the nesting/young-rearing period of local ground-nesting birds and mammals.

Owners also should mow or shred one-third of open areas per year, preferably in strips or mosaic types of patterns, to create "edge" and structural diversity. Weeds are an important source of food for many wildlife species, and owners should, therefore, minimize weed control practices.

Owners should use no till/minimum till agricultural practices to leave waste grain and stubble on the soil surface until the next planting season to provide supplemental food or cover for wildlife, control erosion and improve soil tilth.

Providing shelter also can include roadside right-of-way management for ground-nesting birds, establishing perennial vegetation on circle irrigation corners, terraces, fencerows and field borders, establishing multi-row shelterbelts or renovating old shelterbelts, and protecting and managing old homesites, farmsteads and Conservation Reserve Program cover.

Half-cutting trees and shrubs—partially cutting branches of a live tree or shrub to encourage horizontal cover near the ground—provides supplemental cover in habitats where cover is lacking for a targeted wildlife species (See the Texas Parks and Wildlife Department's *Bulletin 48*).

Woody plant/shrub establishment—planting native seedlings to establish shrub thickets, shelterbelts or wind rowswind rows—should be organized by four rows of 120 feet for a 1/4 mile.

Natural cavity/snag development involves retaining and/or creating snags for cavity-dwelling species. Undesirable trees can be girdled or treated with herbicide and left standing. Large living trees should be protected and girdling should be minimal where trees are insufficient.

Census Counts

Census counts are periodic surveys and inventories to determine the number, composition or other relevant information about a wildlife population to measure if the current wildlife management practices are serving the targeted species. Such surveys also help evaluate the management plan's goals and practices. Specifically, this activity estimates species numbers, annual population trends, density or age structure using accepted survey techniques. Annual results should be recorded as evidence of completing this practice. The survey

techniques and intensity listed below should be appropriate to the species counted:

- spotlight counting;
- aerial counts;
- daylight wildlife composition counts;
- harvest data collection and record keeping;
- browse utilization surveys;
- census and monitoring endangered, threatened or protected wildlife; and
- census and monitoring of nongame wildlife species.

Spotlight counting animals at night along a predetermined route using a spotlight should follow accepted methodology, with a minimum of three counts conducted annually.

Aerial counts using a fixed-wing aircraft or helicopter to count animals also should follow accepted methodology for the region and be performed by a trained individual.

Daylight wildlife composition counts are driving counts used to census wildlife in daylight hours. Annual population trends on dove, quail, turkey and deer, as well as sex/age structure on deer, should be determined by sightings along a standardized transect of a minimum of five miles at least three times during a season.

Harvest data collection/record keeping means tracking annual production of wildlife. Age, weight and antler development from harvested deer, and the age and sex information from game birds and waterfowl should be obtained annually.

Browse utilization surveys annually examine deer browse plant species for evidence of deer use on each major vegetative site on the property. The surveys should be conducted in a way that can be repeated.

Census and monitoring of endangered, threatened or protected wildlife through periodic counts can improve management and increase knowledge of the local, regional or state status of the species.

Census and monitoring of nongame wildlife species also can improve management or increase knowledge of the local, regional or state status of the species. These practices can include developing checklists of wildlife diversity on the property and should be a part of a comprehensive wildlife management plan.

For More Information

The Texas Parks and Wildlife Department can provide more information on any of the activities or practices listed above. They also have detailed information on appropriate practices for each ecological region of Texas. Contact your local Texas Parks and Wildlife Department office or the state headquarters in Austin at 1-800-792-1112 or 512/389-4800.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse

Public Hearing on Proposed New LCDC Requirements

The Texas Commission on Alcohol and Drug Abuse (Commission) will hold a public hearing to solicit input on proposed new LCDC requirements on Friday, July 26, 10:00am-noon, Texas Commission on Alcohol and Drug Abuse, MR1, 9001 N. IH 35, Suite 105, Austin, Texas.

Representatives from the Commission will be present to explain the proposed LCDC requirements and receive comments from interested citizens and affected groups. All written and oral comments will be considered.

Interpreters for the hearing impaired will be provided upon request. Please contact Albert Ruiz at (800) 832-9623, extension 6607 ten working days prior to the public hearing to request these services. If you are an individual with a disability and need reasonable accommodation, please notify the Commission ten days in advance of the hearing date for accommodations to be made.

Refer to the TCADA website www.tcada.state.tx.us for additional information about the proposed new requirements. Additional information may be obtained by contacting the Texas Commission on Alcohol and Drug Abuse, Kristine Kostoff, 9001 North IH 35, Suite 105, Austin, Texas 78753-5233, (800) 832-9623, extension 6698.

TRD-200203998
Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
Filed: June 26, 2002

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Ark-Tex Council of Governments

Legal Notice - Request for Proposals

The Ark-Tex Council of Governments (ATCOG) is soliciting two separate sealed proposals as follows:

(1) Property and Casualty Insurance Program.

(2) Medical and Prescription Drug Coverage, Dental Coverage, Basic Group Life and Accidental Death & Dismemberment and Section 125 Plan Administration.

Parties having questions concerning this project should contact Brenda Davis at 903/832-8636.

Proposals packets may be picked up June 24, 2002, after 9:00 A.M. at 122 Plaza West, Texarkana, TX 75501. Requests can be made by e-mail to: bdavis@atcog.org or by fax to 903/832-3441.

Sealed proposals for this project must be returned to Brenda Davis, 122 Plaza West, Texarkana, TX 75501, prior to 2:00 P.M., on August 23, 2002.

ATCOG reserves the right to reject any and/or all proposals or to accept any proposal advantageous to ATCOG.

ATCOG is an equal opportunity organization, which does not discriminate on the basis of race, color, religion, national origin, gender, age, or disability.

TRD-200203965
L. D. Williamson
Executive Director
Ark-Tex Council of Governments
Filed: June 24, 2002

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Office of the Attorney General

Access and Visitation Grant Request for Applications

Pursuant to 42 U.S.C. 669b, the U.S. Department of Health and Human Services is providing grant funding to the State of Texas for non-custodial parent access and visitation programs. The Office of the Attorney General is responsible for the administration of the program in Texas. The Office of the Attorney General intends to award grants to eligible entities for the purposes of the program.

These grants may be used to establish and administer programs to support and facilitate non-custodial parent's access to and visitation with their children. Eligible activities include: mediation, counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangements. Projects funded under this program do not have to run on a

statewide basis. Entities eligible for funding include: courts, local public entities, and private non-profit organizations. Matching funds (cash or in-kind) are required.

To assist your organization in applying for these funds, our office has developed instructions to guide you through the application process. All request for applications can be submitted via e-mail, fax or U.S. mail, to:

Arlene Pace

Office of the Attorney General

Child Support Division

P.O. Box 12017, Mail Code 033

Austin, Texas 78711-2017

Fax: (512) 460-6618

E-mail: arlene.pace@cs.oag.state.tx.us.

If you prefer, you can also download the application from our website at www.oag.state.tx.us., click on the Child Support page.

The deadline for submitting applications is 5:00 p.m., Central Daylight Savings Time, Monday, August 2, 2002. Applicants should note that submissions received after this time and date will only be considered at the OAG's discretion. Applicants should also be aware that intensified interest in the grant has necessitated our placing a cap of $50,000 on any single award, so that we may allocate funding to as many deserving organizations as possible.

For information regarding this publication, contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200203977
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: June 25, 2002

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Texas Building and Procurement Commission

Notice of Contract Airline Fares Request for Proposal Addendum #2

The Texas Building and Procurement Commission (TBPC) announces Addendum #2 to Request for Proposal (RFP) for Contract Airline Fares (RFP #12-0502AF) to be provided to the State of Texas pursuant to the Texas Government Code, §2171.052. Any contract which results from this RFP shall be for the term of September 1, 2002, through August 31, 2003.

Pre-proposal Conference:

Addendum #2 reflects the announcement of a second pre-proposal conference to be held on July 2, 2002.

Submission of Response to the RFP:

Responses to the RFP shall be submitted to and received by the TBPC Bid Tabulation on or before 3:00 p.m., Central Daylight Time, on July 23, 2002, and shall be delivered or sent to: The Texas Building and Procurement Commission, Attention: Bid Tabulation, RFP #12-0502AF, 1711 San Jacinto Boulevard, Room 180, Austin, Texas 78701, or P.O. Box 13047, Austin, Texas 78711-3047.

Copies of RFP:

If you are interested in receiving a copy of the RFP, Addendum #1, and Addendum #2, contact Ms. Bonnie Barrington, at (512) 463-5773 to request a copy.

TRD-200203974
Juliet King
Legal Counsel
Texas Building and Procurement Commission
Filed: June 25, 2002

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 07/01/02 - 07/07/02 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 07/01/02 - 07/07/02 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005[3] for the period of 07/01/02 - 07/31/02 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 for the period of 07/01/02 - 07/31/02 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.

[3]For variable rate commercial transactions only.

TRD-200203970
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 25, 2002

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Texas Department of Criminal Justice

Award Posting Notice

Contract Administrator: Connie West

Texas Department of Criminal Justice, Two Financial Plaza, Suite 525, Huntsville, Texas 77340.

Solicitation No: 696-FD-1-Q021; Solicitation Title: FDES - A/E Professional Services; Contract Number: 696-FD-2-4-C0168; Award Date: 04/23/02; Amount Awarded to Vendor: $750,000.00. Awarded Vendor is a Non-Hub vendor.

Awarded Vendor Name and Address: Jacobs Facilities, Inc., 5995 Rogerdale Road, Mailstop 2269, Houston, Texas 77072

TRD-200203969
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: June 24, 2002

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Award Posting Notice

Contract Administrator: Daniel Madison

Texas Department of Criminal Justice, Two Financial Plaza, Suite 525, Huntsville, Texas 77340.

Solicitation No: 696-FD-2-B012; Solicitation Title: Repair Concrete Around Rec. Yards at Woodman State Jail; Contract Number: 696-FD-2-3-C0224.

Award Date: (est) 07/15/02; Amount Awarded to Vendor: $68,900.00

Awarded Vendor Name and Address: BFR Construction, 2001 Fort Ave, Waco, Texas, 76707

HUB Status of Awarded Vendor: Non-Hub

TRD-200203972
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: June 25, 2002

Notice to Bidders

The Texas Youth Commission invites bids for the construction of West Texas State School Improvements - Roofing Project at Pyote, Texas. The project consists of roof recovery/replacement/restoration, to include debris disposal, on selected buildings located at West Texas State School, Pyote, Texas. Buildings included are indicated on drawings. Refer to drawings and specifications for requirements. The estimated total square footage is 189,000. The work includes mechanical and electrical systems, and other miscellaneous work as further shown in the Contract Documents prepared by Parker, Smith & Cooper, Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of five (5) consecutive years of experience as a General Contractor and provide references for at least two projects within the last five years that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

All Bid Proposals must be accompanied by a Bid Deposit in the amount of 5% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of **$60.00 (Sixty dollars), non-refundable**, per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer:

Parkhill, Smith & Cooper, Attn: Les Burke, 5214 Thomason Drive, Midland, Texas 79703. Phone: 915-697-1447; FAX: 915-697-9758.

A Pre-Bid conference will be held at **10:00 a.m. on July 31, 2002 at the West Texas State School, Pyote, Texas, followed by a site-visit. ONLY ONE SCHEDULED SITE VISIT WILL BE HELD FOR REASONS OF SECURITY AND PUBLIC SAFETY; THEREFORE, BIDDERS ARE STRONGLY ENCOURAGED TO ATTEND.**

Bids will be publicly opened and read at 2:00 p.m. on August 14, 2002, in the Contracts and Procurement Conference Room located in the West Hill Mall, Suite 525, Two Financial Plaza, Huntsville, Texas.

The Texas Youth Commission requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least **26.1%** of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

Interested bidders should contact the TDCJ contact person registering their name, address, telephone number and fax number for the purpose of being notified by TDCJ should any amendments be issued associated with this bid opportunity. Amendments will not be posted on this website. Should an amendment be issued a bidders failure to register with TDCJ subjects their bid to disqualification.

TRD-200203971
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: June 25, 2002

Texas Department of Economic Development

Correction of Error

In the June 21, 2002, issue of the *Texas Register*, the Texas Department of Economic Development (department) submitted a Notice of Request for Proposal for Outside Legal Services Related to Industrial Revenue Bonds. On page 5599, last paragraph, the response date is shown as June 22, 2002. This is in error and should be shown as "July 22, 2002".

TRD-200204017
Gary Rosenquest
Chief Administrative Officer
Texas Department of Economic Development
Filed: June 26, 2002

Texas Department of Health

Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Houston Medical Imaging, Houston, M00685; Denton Animal Hospital II, Denton, R15738; Astrodome Chiropractic and Sports Clinic, Inc., Houston, R17897; Laney Chiropractic and Rehabilitation Center, Keller, R18126; Dassy R. Salazar, D.M.D., P.C., Houston, R19964; Exxon Mobil Corporation, Houston, R21002; Healthsouth Diagnostic Center of Texas LLP, Plano, R21692; Ann Marie Olson, D.D.S., Austin, R21703; Tower Medical Center of Port Neches, Port Neches, R21736; Southwest Austin Family Physicians, Austin, R25106; Mansfield South Arlington Family Medicine Clinic, PA, Mansfield, R25317; McNabb Chiropractic Clinic, Kilgore, R25363.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200204002
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 26, 2002

Notice of Intent to Revoke the Radioactive Material License of Resolution Performance Products LLC

Pursuant to 25 Texas Administrative Code, §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensee: Resolution Performance Products LLC, Deer Park, L05323.

The complaint alleges that the licensee has failed to pay required annual fees. The department intends to revoke the radioactive material license; order the licensee to cease and desist use of such radioactive material; order the licensee to divest himself of the radioactive material; and order the licensee to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material license will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200204003
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 26, 2002

Texas Health and Human Services Commission

Public Hearing on Strategic Plan

The Health and Human Services Commission (HHSC) and the Health and Human Services agencies will conduct a public hearing to receive public comment on the development of the Health and Human Services Coordinated Strategic Plan. A draft of the plan will be available on the HHSC web site http://www.hhsc.state.tx.us/news/meetings.html on or around July 12, 2002.

The public hearing provides the opportunity for public input and participation in the strategic planning process. 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 coordinated efforts of the Health and Human Services agencies that are contained in the draft coordinated strategic plan.

The hearing will be held on July 26, 2002 in Austin, Texas, beginning at 9:00 a.m. Central Time, in the auditorium of the Criss Cole Rehabilitation Center, located at 4800 North Lamar. Written comments may be submitted to the Health and Human Services Commission until July 26, 2002. Please address written comments to: Texas Health and Human Services Commission, Attention: Christy Fair, P.O. Box 13247, Austin, Texas 78711-3247, fax (512) 424-6590, e-mail: Christy.Fair@hhsc.state.tx.us

Agenda - Public Hearing, July 26, 2002, 9:00 a.m.

I. Welcome

II. Opening Comments

III. Public Testimony

IV. Closing Comments

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Colleen Edwards at (512) 424-6664 seven days prior to the hearing so that appropriate arrangements can be made.

TRD-200204001
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 26, 2002

Public Notice

The Health and Human Services Commission State Medicaid/CHIP Office has submitted to the Centers for Medicare and Medicaid Services (CMS) a state plan amendment to the Texas Child Health Plan.

This amendment will expand the sources of Title XXI state matching funds to include bona-fide donations. The proposed effective date for the amendment is June 15, 2002.

If additional information is needed, please contact Carlotta Vann, Health and Human Services Commission at (512) 685-3170.

TRD-200204000
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 26, 2002

Texas Department of Housing and Community Affairs

Notice of Public Hearing on Multifamily Housing Revenue Bonds (Clarkridge Villas Apartments) Series 2002

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at City of

Dallas Public Library, Dallas Meeting Room, located at 1515 Young Street, Dallas, Texas 75201 at 6:00 p.m. on July 23, 2002 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Clarkridge Villas Housing, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 256-unit multifamily residential rental development to be constructed on approximately 26.0 acres of land located at the intersection of Clark Road and Clarkridge Road in Dallas, Texas. The project will be initially owned and operated by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872 and/or ronion@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200204012
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 26, 2002

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Notice of Public Hearing on Multifamily Housing Revenue Bonds (Wheatland Villas Apartments) Series 2002

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at City of Dallas Public Library, Dallas Meeting Room, located at 1515 Young Street, Dallas, Texas 75201 at 6:00 p.m. on July 22, 2002 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Wheatland Villas Housing, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 256-unit multifamily residential rental development to be constructed on approximately 13.0 acres of land located at the southwest corner of Interstate Highway 35 and Ledbetter in Dallas, Texas 75232. The project will be initially owned and operated by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872 and/or ronion@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200204011
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 26, 2002

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Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council (H-GAC) is requesting proposals for the implementation of Transportation Demand Management (TDM) Pilot Programs, and Provision of Technical Assistance and Support Services and Training for the Commute Solutions Program. The pilot programs and services to be implemented through this project include: * Commuter Choice Leadership Initiative (CCLI) Pilot Program * Telework Pilot Program * Transportation Management Organization (TMO) Technical Support * Commuter and Transit Services Pilot Program Technical Support

These programs will be implemented in the Houston-Galveston Transportation Management Area (TMA). The Houston-Galveston TMA includes Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties. These TDM programs and technical support services should be designed to provide viable, efficient and cost effective alternatives to commuting alone, thereby reducing traffic congestion along major travel corridors, and improving mobility and air quality, while supporting and benefiting the region's economic development and business climate. This project should explore the effectiveness of these TDM programs and services as trip reduction strategies and quantify air quality benefits that can be achieved.

These programs and services will be primarily focused in large suburban employment centers, including the TMO service areas, communities that are served by commuter and transit pilot projects, and congested travel corridors. This project should be designed to offer commuter choice benefits as well as federal income tax credits for employers and employees. Only proposals that provide programs and direct services resulting in trip and emissions reductions will be considered. The selected proposal will be funded with federal Congestion Mitigation and Air Quality (CMAQ) funds. To view the RFP, visit www.hgac.cog.tx.us/transportation/rfps.html or www.commutesolutions-hou.com.

A Pre-Proposal meeting will be held at H-GAC on the 2nd Floor, Room A, on July 2, 2002 at 1 p.m. **Proposals must be received by noon on Monday, July 22, 2002. Late proposals will not be accepted.** Mail proposals to Alan Clark, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227-2777, or deliver to 3555 Timmons Lane, Suite 120, Houston, Texas. For more information, please contact Alan Clark, MPO Director, at (713) 627-3200.

TRD-200203876

Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: June 20, 2002

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Texas Department of Human Services

Open Solicitation for Schleicher County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, the Texas Department of Human Services (DHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Schleicher County, County #207**. Medicaid contracted nursing facility occupancy rates in **Schleicher County** exceed the threshold (90% occupancy) in each of six months in the continuous period of **November 2001 through April 2002**. The county occupancy rates for each month of that period were: **94.3%, 96.2%, 95.4%, 95.8%, 96.7%, 97.0%**. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must demonstrate a history of quality of care, as specified in §19.2322(d) of this title (relating to Allocation, Reallocation, and Decertification Requirements). Potential contractors must submit a written reply (as described in 40 TAC §19.2324) to DHS, to Joe D. Armstrong, Facility Enrollment Section, Long Term Care- Regulatory, Mail Code E-342, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by DHS before the close of business August 5, 2002, the published ending date of the open solicitation period. DHS allocates certified beds equally among qualified nursing facility operators (NFOs) until the occupancy rate is reduced to less than 90%. When there are insufficient available beds after the primary selection to reduce occupancy rates to less than 90%, DHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for potential contractors wishing to construct a nursing facility or an addition to an existing nursing facility.

TRD-200204004
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: June 26, 2002

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Texas Department of Insurance

Company Licensing

Application to change the name of NCM AMERICAS, INC. to GERLING NCM CREDIT INSURANCE, INC., a foreign fire and/or casualty company. The home office is in Baltimore, Maryland.

Application to change the name of ASSET GUARANTY INSURANCE COMPANY to RADIAN ASSET ASSURANCE INC., a foreign fire and/or casualty company. The home office is in New York, New York.

Application for incorporation to the State of Texas by NATIONS BONDING COMPANY, a domestic fire and/or casualty company. The home office is in Austin, Texas.

Application for admission to the State of Texas by UNITED HOME LIFE INSURANCE COMPANY, a foreign life, and accident and/or health company. The home office is in Indianapolis, Indiana.

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-200204013
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 26, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Comercial America Insurance Company proposing to use rates for commercial 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 various flex percentages for territory (Texas) --for Non-Resident Auto Liability with annual premium class: -48 for 20/40/15, -49 for 60, 000 CSL, -41 for 100,000 CSL, and -26 for 300,000 CSL; and for Special Tourist Rate with daily rate class: -40 for 20/40/15, -72 for 60, 000 CSL, -61 for 100,000 CSL, and -66 for 300,000 CSL. The overall rate change is 0%.

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 July 22, 2002

TRD-200203883
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 21, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Farmland Mutual Insurance Company proposing to use rates for commercial 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 percentage +50 for Liability and +25 for Physical Damage coverages under all clasess and territories. The overall rate change is +10.6%.

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 July 18, 2002.

TRD-200203884
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 21, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Nationwide Agribusiness Insurance Company proposing to use rates for commercial 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 percentage +35 for Liability and -10 for Physical Damage coverages under all classes and territories. The overall rate change is +16.6%

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 July 18, 2002.

TRD-200203885
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 21, 2002

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Notice of Public Hearing

The Texas Department of Insurance (the department) will conduct a public hearing under Docket Number 2523 for the purpose of selecting a licensing testing contractor to provide certain services under the Insurance Code, Article 21.01-1. A hearing was originally scheduled on June 7, 2002, but postponed until a later date. The hearing is now rescheduled for July 15, 2002, at 1:30 p.m. in Room 100 of the William P. Hobby State Office Building, 333 Guadalupe Street in Austin, Texas. The hearing is held in compliance with the Insurance Code, Article 21.01-1, which requires that the department hold a public hearing prior to the selection of a licensing testing contractor.

RFP No. 02-RBD-LicTesting1. On February 15, 2002, the department issued a Request for Proposals (RFP) for the purpose of acquiring a contractor to provide testing services that meet the examination requirements for persons seeking license as agents, solicitors, counselors, or adjusters under the Insurance Code. The department's notice of issuance of the RFP was posted electronically on the Texas Building and Procurement Commission's (TBPC) Electronic State Business Daily web page and was sent via e-mail to vendors on TBPC's Centralized Master Bidders List (CMBL) who were registered to receive bids matching the services in the RFP. The deadline for the department's receipt of proposals was 3:00 p.m., March 15, 2002. The department received two proposals in response to the RFP.

Project Description. The selected contractor shall provide the department with testing services that include examination development, test scheduling, examination site arrangement and the test's administration, grading, reporting and analysis. The selected contractor shall cooperate with advisory boards, if any, appointed by the Commissioner of Insurance under the Insurance Code, Article 21.01-1. The required services are described in the department's RFP and in 28 Texas Administrative Code §§19.1101 through 19.1110.

Proposal Evaluation and Award. Proposals were reviewed and evaluated by an evaluation committee based on the evaluation criteria set forth in the RFP. The evaluation committee will submit its recommendations to the Commissioner of Insurance prior to or during the public hearing for the selection of the contractor. See also 28 Texas Administrative Code §§19.1101 through 19.1110.

The department reserves the right to reject any or all proposals or offers deemed not to be in the best interests of the department or the State of Texas. The department will not make any payments to any contractor for services performed or costs incurred under the terms of or in connection with any contract awarded as a result of the department's issuance of the RFP. The selected contractor's sole compensation will be through the contractor's collection from applicants of certain specific fees that have been approved by the department in writing as described in the RFP. The department will not make any payments for any costs incurred by any contractor in preparing a proposal response to the RFP; such costs may not be recouped by the selected contractor under the terms of any resulting contract.

Anticipated Schedule

It is anticipated that the selection of a contractor for the performance of services to begin effective September 1, 2002 will proceed according to the following approximate timetable.

TDI issuance of RFP February 15, 2002

Deadline for Proposals March 15, 2002

TDI appointment of Evaluation Committee April 29, 2002

TDI public hearing to make selection June 7, 2002

Contract signed June 15, 2002

TDI appointment of Advisory Board July 31, 2002

Advisory board review of proposed examinations August, 2002

Design and implementation of new system June 15 through, September 1, 2002

New system operational September 1, 2002

The department reserves the right to change these dates.

Contacts. Parties may request a copy of the department's RFP by contacting Ms. Regina B. Durden, Director of Purchasing and Contract Administration, Mail Code 108-1B, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 463-6174. For further information regarding the hearing, parties should contact the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 463-6326.

TRD-200204016
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 26, 2002

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Texas Lottery Commission

Instant Game 299 "Best of 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 299 is "BEST OF 7'S". The play style is "7 games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 299 shall be $7.00 per ticket.

1.2 Definitions in Instant Game No. 299.

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, $3.00, $4.00, $5.00, $7.00, $10.00, $11.00, $15.00, $25.00, $27.00, $50.00, $77.00, $100, $500, $1,000, $7,000, $70,000, X, [ ], 1 DIE, 2 DIE, 3 DIE, 4 DIE, 5 DIE, 6 DIE, BOOT SYMBOL, SADDLE SYMBOL, HAT SYMBOL, SPUR SYMBOL, HORSE SYMBOL, STAR SYMBOL, HORSESHOE SYMBOL, BEEF SYMBOL, STEER SYMBOL, BRANDING IRON SYMBOL, FIRE SYMBOL, SUN SYMBOL, SEVEN SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, MONEY BAG SYMBOL, STACK OF BILLS SYMBOL, and DOLLAR SIGN 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: GAME NO. 299 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
7	AUTO
7	
X	
[ ]	
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$7.00	SEVEN$
$10.00	TEN$
$11.00	ELEVEN
$15.00	FIFTN
$25.00	TWY FIV
$27.00	TWY SVN
$50.00	FIFTY
$77.00	SVTY SVN
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$7,000	SVN THOU
$70,000	70 THOU
7	DOUBLE
1 DIE	ONE
2 DIE	TWO
3 DIE	THR
4 DIE	FOR
5 DIE	FIV
6 DIE	SIX
BOOT SYMBOL	BOOT
SADDLE SYMBOL	SADDLE
HAT SYMBOL	HAT
SPUR SYMBOL	SPUR
HORSE SYMBOL	HORSE
STAR SYMBOL	STAR
HORSESHOE SYMBOL	SHOE
BEEF SYMBOL	BEEF

STEER SYMBOL	STEER
BRANDING IRON	BRAND
FIRE SYMBOL	FIRE
SUN SYMBOL	SUN
7 (outlined)	SVN
DIAMOND SYMBOL	DIAMD
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTGLD
MONEY BAG SYMBOL	$BAG
STACK OF BILLS SYMBOL	BILLS
DOLLAR SIGN SYMBOL	MONEY
7	WIN$10

Table 2 of this section.

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. 299 - 1.2E

CODE	PRIZE
SVN	$7.00
ELV	$11.00
SVT	$17.00

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 $7.00, $11.00, or $17.00.

H. Mid-Tier Prize - A prize of $27.00, $47.00, $77.00, $177, or $577.

I. High-Tier Prize - A prize of $7,000 or $70,000.

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 thirteen (33) digit number consisting of the three (3) digit game number (299), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 299-0000001-000.

L. Pack - A pack of "BEST OF 7'S" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074, while the other fold will show the back of ticket 000 and front of 074.

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 "BEST OF 7'S" Instant Game No. 299 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 "BEST OF 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 42 (forty-two) play symbols. In Game 1, if the player matches either of the YOUR NUMBERS to the LUCKY NUMBER, the player will win the prize shown. If the player gets a 7 symbol, the player will win that prize automatically. In Game 2, if the player gets 3 X's or [ ]'s in the same row, column or diagonal, the player will win the prize shown. If the player gets 3 7's in the same row column or diagonal, the player will win double the prize shown. In Game 3, if the total of the 2 numbers equal 7, the player will win $7 instantly. In Game 4, if the player matches 3 like amounts, the player will win that amount. If the player matches 2 like amounts and a 7, the player will win double that amount. In Game 5, if the player matches 3 "7" symbols, the player will win the prize in the prize box. In Game 6, if the player's YOUR DICE adds up to 7 in the same roll, the player will win the prize for that roll. In Game 7, if the player matches 2 out of 3 "7" symbols, the player will win $10 instantly. 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 42 (forty-two) 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 42 (forty-two) 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 42 (forty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 42 (forty-two) 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. Game 1: Non-winning prize symbols will never be the same as the winning prize symbol.

C. Game 1: No duplicate non-winning prize symbols.

D. Game 1: No duplicate non-winning Your Numbers on a ticket.

E. Game 1: No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

F. Game 2: The doubler "7" symbol will only appear in a line, diagonal or row as dictated by the prize structure.

G. Game 2: This game may only win once.

H. Game 4: No four or more of a kind.

I. Game 5: This game may only win once.

J. Game 5: There will never be 3 or more duplicate non-winning symbols.

K. Game 6: No duplicate non-winning rolls in any order

L. Game 6: No duplicate non-winning prize symbols.

M. Game 7: There will never be 2 or more duplicate non-winning symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "BEST OF 7'S" Instant Game prize of $7.00, $11.00, $17.00, $27.00, $47.00, $77.00, $177, or $577, 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 $47.00, $77.00, $177, or $577 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 "BEST OF 7'S" Instant Game prize of $7,000 or $70,000, 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 "BEST OF 7'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 "BEST OF 7'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 "BEST OF 7'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 6,104,925 tickets in the Instant Game No. 299. The approximate number and value of prizes in the game are as follows:

Table 3 of this section

Figure 3: GAME NO. 299 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$7	895,569	6.82
$11	366,599	16.65
$17	284,626	21.45
$27	81,399	75.00
$47	81,399	75.00
$77	30,501	200.15
$177	14,486	421.44
$577	2,306	2,647.41
$7,000	12	508,743.75
$70,000	4	1,526,231.25

*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 3.47. 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. 299 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. 299, 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.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 20, 2002

Instant Game 353 "Cash Dash Double Doubler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 353 is "CASH DASH DOUBLE DOUBLER". The play style is "match 3 with 2X and 4X".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 353 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 353.

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: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $80.00, $100, $400, $1,000, $4,000, SINGLE PRIZE, DOUBLE PRIZE, DOUBLE DOUBLER.

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: GAME NO. 353 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$80.00	EIGHTY
$100	ONE HUND
$400	FOUR HUND
$1,000	ONE THOU
$4,000	FOUR THOU
SINGLE PRIZE SYMBOL	1 X PRIZE
DOUBLE PRIZE SYMBOL	2 X PRIZE
DOUBLE DOUBLER SYMBOL	4 X PRIZE

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: GAME NO. 353 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00

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, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00, $50.00, $80.00, $100, or $400.

I. High-Tier Prize - A prize of $4,000.

J. Bar Code - A 22 (twenty-two) 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 13 (thirteen) digit number consisting of the three (3) digit game number (353), 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: 353-0000001-000.

L. Pack - A pack of "CASH DASH DOUBLE DOUBLER" 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 first page, 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 "CASH DASH DOUBLE DOUBLER" Instant Game No. 353 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 DASH DOUBLE DOUBLER" Instant Game is determined once the latex on the ticket is scratched off to expose seven (7) play symbols. If the player gets three like amounts, the player will win that amount. The player may then scratch the BONUS for a chance to win double or even 4 times the prize amount. 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 seven (7) 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 seven (7) 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 seven (7) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the seven (7) 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 within a book will not have identical patterns.

B. No ticket will have three pairs of like Prize symbols.

C. No ticket will have four or more like Prize symbols.

D. Non-winning tickets will never contain one or more pair of matching Prize symbols and have either DOUBLE PRIZE or DOUBLE DOUBLER in the Bonus area.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH DASH DOUBLE DOUBLER" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $80.00, $100, or $400, 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 $50.00, $80.00, $100, or $400 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 DASH DOUBLE DOUBLER" Instant Game prize of $4,000, 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 DASH DOUBLE DOUBLER" 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 DASH DOUBLE DOUBLER" 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 DASH DOUBLE DOUBLER" 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 12,236,750 tickets in the Instant Game No. 353. The approximate number and value of prizes in the game are as follows:

Table 3 of this section

Figure 3: GAME NO. 353 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	978,922	12.50
$2	1,174,728	10.42
$4	293,664	41.67
$5	24,509	499.28
$10	36,648	333.90
$20	36,737	333.09
$40	12,257	998.35
$50	4,067	3,008.79
$80	4,903	2,495.77
$100	2,046	5,980.82
$400	414	29,557.37
$4,000	35	349,621.43

*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 4.76. 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. 353 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. 353, 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.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 20, 2002

Instant Game 711 "Royale Riches"

1.0 Name and Style of Game.

A. The name of Instant Game No. 711 is "ROYALE RICHES". The play style in Game 1 is "beat score". The play style in Game 2 is "match 3". The play style in Game 3 is "key number match". The play style in Game 4 is "add up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 711 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 711.

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: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2, 1, $5.00, $10.00, $25.00, $50.00, $100, $500, $1,000, $5,000, $50,000, GOLD BAR SYMBOL, MONEY BAG SYMBOL, STACK OF BILLS SYMBOL, DOLLAR SIGN SYMBOL, CHIP SYMBOL, STACK OF COINS SYMBOL, POT OF GOLD 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. 711 - 1.2D

Figure 1: GAME NO. 711 - 1.2D

PLAY SYMBOL	CAPTION
A	ACE
K	KNG
Q	QUN
J	JCK
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
$5.00	FIVE$
$10.00	TEN$
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$5,000	FIV THOU
$50,000	50 THOU
GOLD BAR SYMBOL	GOLD
MONEY BAG SYMBOL	$BAG
STACK OF BILLS SYMBOL	BILLS
DOLLAR SIGN SYMBOL	MONEY
CHIP SYMBOL	CHIP
STACK OF COINS SYMBOL	STACK
POT OF GOLD SYMBOL	POTGLD

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: GAME NO. 711 - 1.2E

CODE	PRIZE
$5.00	FIV
$10.00	TEN
$15.00	FTN
$20.00	TWN

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 $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100, or $500.

I. High-Tier Prize - A prize of $1,000, $5,000, or $50,000.

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 thirteen (13) digit number consisting of the three (3) digit game number (711), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 711-0000001-000.

L. Pack - A pack of "ROYALE RICHES" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074, while the other fold will show the back of ticket 000 and front of 074.

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 "ROYALE RICHES" Instant Game No. 711 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 "ROYALE RICHES" Instant Game is determined once the latex on the ticket is scratched off to expose 40 (forty) play symbols. In the Beat The Dealer section, if the player's YOUR CARD beats the DEALER'S CARD in the same game, the player will win the prize shown for that game. Aces are high. In the Match Up section, if the player matches 3 symbols across the same row, the player will win the prize shown. In the Lucky Wheel section, if the player matches the YOUR LUCKY DOLLAR AMOUNTS to the PRIZE AMOUNT in the center, the player will win that prize. In the 7-11 section, if the player's dice add up to 7 or 11 in the same roll, the player will win the prize for that roll. 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 40 (forty) 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 40 (forty) 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 40 (forty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 40 (forty) 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. In the Beat The Dealer section, there will never be 3 or more like card symbols in the 8 play spots.

C. In the Beat The Dealer section, there will be no duplicate non-winning prize symbols.

D. In the Beat The Dealer section, there will be no ties in a game.

E. In the Match Up section, there will be no duplicate non-winning games on a ticket in any order.

F. In the Match Up section, there will be no 3 or more like non-winning symbols on the ticket.

G. In the Lucky Wheel section, there will be no duplicate non-winning Your Lucky Dollar Amounts.

H. In the 7-11 section, there will be no duplicate non-winning rolls in any order.

2.3 Procedure for Claiming Prizes.

A. To claim a "ROYALE RICHES" Instant Game prize $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, and $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 $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 "ROYALE RICHES" Instant Game prize of $1,000, $5,000 or $50,000, 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 "ROYALE RICHES" 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 "ROYALE RICHES" 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 "ROYALE RICHES" 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 3,054,900 tickets in the Instant Game No. 711. The approximate number and value of prizes in the game are as follows:

Table 3 of this section

Figure 3: GAME NO. 711 - 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$5	580,448	5.26
$10	295,252	10.35
$15	71,312	42.84
$20	40,732	75.00
$25	20,240	150.93
$50	8,653	353.05
$100	4,187	729.62
$500	771	3,962.26
$1,000	187	16,336.36
$5,000	15	203,660.00
$50,000	4	763,725.00

*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 2.99. 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. 711 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. 711, 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-200203872
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 20, 2002

♦ ♦ ♦

Instant Game 712 "Magic Numbers"

1.0 Name and Style of Game.

A. The name of Instant Game No. 712 is "MAGIC NUMBERS". The play style in Game 1 is "match 3". The play style in Game 2 is "beat score". The play style in Game 3 is "key number match with auto win".

The play style in Game 4 is "column, row, diagonal". The play style in Game 5 is "match 3". The play style in Game 6 is "add up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 712 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 712.

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, $5.00, $10.00, $25.00, $50.00, $100, $500, $1,000, $40,000, 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: GAME NO. 712 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
$5.00	FIVE$
$10.00	TEN$
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$40,000	40 THOU
7	
STAR SYMBOL	AUTO

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: GAME NO. 712 - 1.2E

CODE	PRIZE
$5.00	FIV
$10.00	TEN
$15.00	FTN
$20.00	TWN

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 $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $200, or $500.

I. High-Tier Prize - A prize of $1,000, $5,000, or $40,000.

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 thirteen (13) digit number consisting of the three (3) digit game number (712), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 712-0000001-000.

L. Pack - A pack of "MAGIC NUMBERS" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074, while the other fold will show the back of ticket 000 and front of 074.

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 "MAGIC NUMBERS" Instant Game No. 712 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 "MAGIC NUMBERS" Instant Game is determined once the latex on the ticket is scratched off to expose 36 (thirty-six) play symbols. In Game 1, if the player matches 3 like amounts, the player will win that amount. In Game 2, if the player's YOUR SCORE beats THEIR SCORE in any one row across, the player will win the prize shown for that row. In Game 3, if the player matches any of YOUR NUMBERS to the LUCKY NUMBER, the player will win the prize shown. If the player gets a star symbol, the player will win that prize automatically. In Game 4, if the player gets 3 7 symbols in the same row, column or diagonal, the player will win the prize shown. In Game 5, if the player gets three like numbers, the player will win the prize shown. In Game 6, if the 2 numbers add up to exactly 10, the player will win $10. 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 36 (thirty-six) 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 36 (thirty-six) 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 36 (thirty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 36 (thirty-six) 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. In Game 1, there will be no four or more of a kind.

C. In Game 2, there will be no duplicate non-winning Your Score play symbols.

D. In Game 2, there will be no duplicate non-winning Their Score play symbols.

E. In Game 2, there will be no duplicate non-winning prize symbols.

F. In Game 2, there will be no ties within a row.

G. In Game 3, non-winning prize symbols will never be the same as the winning prize symbol.

H. In Game 3, there will be no duplicate non-winning prize symbols.

I. In Game 3, there will be no duplicate Your Number on a ticket.

J. In Game 3, no prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

K. In Game 4, there will be no more than one occurrence of three 7 symbols in a row, column or diagonal on ticket.

L. In Game 4, there will never be 3 symbols in the same row, column or diagonal line with the exception of the 7 symbol.

M. In Game 4, there will be at least 4 sevens in every game.

N. Game 5 may only win once.

O. In Game 5, there will be no 4 or more like play symbols.

P. In Game 6, the sum of the 2 numbers will never total less than 4 or more than 15.

2.3 Procedure for Claiming Prizes.

A. To claim a "MAGIC NUMBERS" Instant Game prize $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $200, and $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 $50.00, $100, $200, 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 "MAGIC NUMBERS" Instant Game prize of $1,000, $5,000 or $40,000, 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 "MAGIC NUMBERS" 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 "MAGIC NUMBERS" 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 "MAGIC NUMBERS" 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 3,037,500 tickets in the Instant Game No. 712. The approximate number and value of prizes in the game are as follows:

Table 3 of this section

Figure 3: GAME NO. 712 - 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$5	506,342	6.00
$10	192,325	15.79
$15	121,436	25.01
$20	60,800	49.96
$25	30,751	98.78
$50	15,469	196.36
$100	4,120	737.26
$200	105	28,928.57
$500	105	28,928.57
$1,000	100	30,375.00
$5,000	10	303,750.00
$40,000	5	607,500.00

*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 3.26. 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. 712 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. 712, 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-200203871
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 20, 2002

Instant Game 717 "Big Money Spectacular"

1.0 Name and Style of Game.

A. The name of Instant Game No. 717 is "BIG MONEY SPECTACULAR". The play style in Game 1 is "Your Score beats Their Score". The play style in Game 2 is "key number match with doubler". The play style in Game 3 is "key symbol match with auto win". The play style in Game 4 is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 717 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 717.

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, 10, $1.00, $2.00, $4.00, $5.00, $8.00, $10.00, $20.00, $50.00, $100, $250, $500, $1,000, $5,000, $60,000, $ SYMBOL, MONEY BAG SYMBOL, BOOT SYMBOL, SADDLE SYMBOL, HAT SYMBOL, SPUR SYMBOL, HORSE SYMBOL,

STAR SYMBOL, HORSESHOE SYMBOL, GOLD BAR SYMBOL, STACK OF BILLS SYMBOL, CLOVER SYMBOL, COIN SYMBOL, and POT OF GOLD 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: GAME NO. 717 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$8.00	EIGHT$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$250	TWO FTY
$500	FIV HUND
$1,000	ONE THOU
$5,000	FIV THOU
$50,000	50 THOU
$60,000	60 THOU
BOOT SYMBOL	BOOT
SADDLE SYMBOL	SADLE
HAT SYMBOL	HAT
SPUR SYMBOL	SPUR
HORSE SYMBOL	HORSE
STAR SYMBOL	STAR
HORSESHOE SYMBOL	SHOE

GOLD BAR SYMBOL	GOLD
STACK OF BILLS SYMBOL	BILLS
CLOVER SYMBOL	CLVER
MONEY BAG SYMBOL	WIN 4
POT OF GOLD SYMBOL	WIN
COIN SYMBOL	TRIPLE

Table 2 of this section.

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. 717 - 1.2E

CODE	PRIZE
$5.00	FIV
$8.00	EGT
$10.00	TEN
$20.00	TWN

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 $5.00, $8.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, or $500.

I. High-Tier Prize - A prize of $1,000, $5,000, or $60,000.

J. Bar Code - A 22 (twenty-two) 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 13 (thirteen) digit number consisting of the three (3) digit game number (717), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 717-0000001-000.

L. Pack - A pack of "BIG MONEY SPECTACULAR" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074, while the other fold will show the back of ticket 000 and front of 074.

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 "BIG MONEY SPECTACULAR" Instant Game No. 717 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 "BIG MONEY SPECTACULAR" Instant Game is determined once the latex on the ticket is scratched off to expose 51 (fifty-one) play symbols. In Game 1, if the player's YOUR NUMBER beats THEIR NUMBER in any one row across, the player will win the prize shown for that row. If the player gets a Money Bag symbol in YOUR NUMBER, the player will win all 4 prizes for this game. In Game 2, if the player matches three (3) like amounts, the player will win that amount. If the player matches 2 like amounts and a dollar symbol, the player will win double that amount shown. In Game 3, if the player matches any of the YOUR SYMBOLS to the LUCKY SYMBOL, the player will win the prize shown for that symbol. If the player gets a pot of gold symbol, the player will automatically win the prize shown for that symbol. In Game 4, if any of the players YOUR NUMBERS match either CASH NUMBERS, the player will win the prize shown for that number. If the player gets a coin symbol under YOUR NUMBERS, the player will win triple the prize shown for that number. 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 51 (fifty-one) 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 51 (fifty-one) 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 51 (fifty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 51 (fifty-one) 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. In Game 1: No duplicate non-winning rows.

C. Game 1: No ties between Your score and Their Score in a row.

D. Game 1: No duplicate non-winning prize symbols.

E. Game 1: When the money bag symbol appears on a ticket, the three other rows will be non-winning plays.

F. Game 2: No four or more of a kind.

G. Game 2: The doubler symbol will never appear more than once.

H. Game 3: No duplicate non-winning prize symbols.

I. Game 3: No duplicate non-winning Your Symbols.

J. Game 3: The pot of gold symbol will never appear more than once.

K. Game 4: No more than one pair of duplicate non-winning prize symbols.

L. Game 4: No duplicate non-winning Your Numbers.

M. Game 4: No duplicate Cash Numbers.

N. Game 4: The tripler symbol will only appear as dictated by the prize structure.

O. Game 4: The tripler symbol will never appear more than once.

2.3 Procedure for Claiming Prizes.

A. To claim a "BIG MONEY SPECTACULAR" Instant Game prize of $5.00, $8.00, $10.00, $20.00, $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 $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 "BIG MONEY SPECTACULAR" Instant Game prize of $1,000, $5,000, or $60,000, 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 "BIG MONEY SPECTACULAR" 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 "BIG

MONEY SPECTACULAR" 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 "BIG MONEY SPECTACULAR" 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 3,006,000 tickets in the Instant Game No. 717. The approximate number and value of prizes in the game are as follows:

Table 3 of this section

Figure 3: GAME NO. 717 - 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$5	400,976	7.50
$8	240,655	12.49
$10	240,262	12.51
$20	70,135	42.86
$50	18,748	160.34
$100	6,306	476.69
$500	375	8,016.00
$1,000	115	26,139.13
$5,000	9	334,000.00
$60,000	2	1,503,000.00

*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 3.07. 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. 717 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. 717, 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-200203877
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 20, 2002

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Manufactured Housing Division

Notice of Administrative Hearing

Thursday, July 25, 2002, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor, Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings (SOAH) in the matter of the complaint of the Texas Department of Housing and Community Affairs vs. Danny Green to hear alleged violations of §7(m) of the Act and §80.123(g)(3) of the Rules by acting as a salesperson without obtaining, maintaining or possessing a valid salesperson's license. SOAH 332-02-3398. Department MHD2002000209-RMS.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-2894, jschroed@tdhca.state.tx.us

TRD-200204015
Tim Irvine
Attorney
Manufactured Housing Division
Filed: June 26, 2002

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Midwestern State University

Request for Proposals - Outside Counsel

REQUESTOR:

Board of Regents

Midwestern State University

3410 Taft Blvd.

Wichita Falls, TX 76308

STATEMENT OF PURPOSE:

The Board of Regents of Midwestern State University is requesting proposals for the purpose of retaining a firm to act as the university's outside counsel.

INSTRUCTIONS TO PROPOSERS:

1. All proposals must be in a sealed envelope and clearly marked: "Sealed Proposal-Outside Counsel Services." All proposals must be received by 10:00 a.m. Thursday, July 25, 2002.

2. Three (3) copies of the proposal are required and may be mailed to: Midwestern State University, ATTN: Debbie Barrow, Executive Assistant, 3410 Taft Blvd., Wichita Falls, TX 76308 or hand delivered to 3410 Taft Blvd., Room 107, Hardin Administration Building, Wichita Falls, TX by 10:00 a.m. July 25, 2002. Each proposal should indicate the name and phone number of the principal contact for the firm.

3. Questions or comments concerning this request for proposals should be directed to: Dr. Jesse W. Rogers, President, Midwestern State University, 3410 Taft Blvd., Wichita Falls, TX 76308, (940) 397-4211.

4. The Board will select a firm at its meeting August 9, 2002. The selected firm will be notified on or about August 16, 2002.

5. The Board shall submit its selection to the Texas State Attorney General for final approval.

TERMS AND CONDITIONS:

1. The Board reserves the right to reject any or all proposals or to award the contract to the next most qualified firm if the successful firm does not execute a contract within thirty (30) days after the award of the proposal.

2. The Board reserves the right to request clarification of information submitted and to request additional information of one or more applicants.

3. The Board and staff will perform an evaluation of the selected firm's performance as necessary, and the Board shall have the right to terminate its contract by specifying the date of termination in a written notice to the firm at least thirty (30) working days before the termination date. In this event, the firm shall be entitled to just and equitable compensation for any satisfactory work completed.

4. Any agreement or contract resulting from acceptance of a proposal shall be on forms either supplied by or approved by the Attorney General. The Board reserves the right to reject any agreement that does not conform to the request for proposals and any Board requirements for agreements and contracts.

5. The selected firm shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of the Board.

ELIGIBLE PROPOSERS

1. The Midwestern State University Board of Regents will only consider proposals from law firms licensed in Texas.

2. Counsel must have prior legal experience with public, non-profit organizations. Experience with state agencies and an interest in education will be viewed favorably in the selection process.

3. Counsel must agree to work closely with the President of the University in matters submitted to Counsel for review.

4. Counsel must agree to attend any and all Board of Regents meetings, which are held no less than quarterly on the campus of Midwestern State University, Wichita Falls, Texas. Counsel's attendance would only be required at the request of the Board and adequate notice would be provided.

5. Counsel must maintain malpractice insurance in an amount of not less $1,000,000.

SCOPE OF SERVICES:

The selected firm will provide the following services:

1. In all situations where local assistance is required by the Office of the Attorney General on litigation or general counsel matters being handled by the Office of the Attorney General, or where the Office of the Attorney General defers the matter to local counsel.

2. In situations where expertise in school law and policy is required.

3. In situations where prior knowledge or experience with the particular facts or issues in the matter or where other unusual circumstances exist which would facilitate the most timely and economical handling of the matter.

4. In emergency and other situations that require a response time that the Office of the Attorney General cannot reasonably provide.

5. In situations involving personal meetings or conferences where the charges for legal fees and expenses for travel by the Office of the Attorney General would result in a total cost greater than could be obtained by using the local counsel.

QUALIFICATIONS:

1. Describe how the firm is organized and how its resources will be put to work for MSU.

2. List the firm's most recent three (3) years of experience in higher education, school law, state agency or public, non-profit organizations relationships. State the term of the relations, briefly describe the work performed, and include the names, addresses and phone numbers of contact persons.

3. Affirm that no individual in the firm has represented any client in any matter pending before Midwestern State University during the previous six-month period.

PERSONNEL:

1. Indicate which individuals in the firm would be assigned in a direct, on-going working relationship with the Board and staff and include their resumes. Indicate the role these individuals assumed in the three-year history of higher education, school law, state agency or public, non-profit organizations relationships as described in subsection 2 of the QUALIFICATIONS section.

2. Indicate the availability of individuals described in subsection 1 of this section.

3. Include a description of your firm's Affirmative Action program and include any strides made in the employment of women and minorities.

COMPENSATION:

Explain the firm's proposed hourly fee schedule and the projected annual cost for the scope of services detailed in this RFP. If the firm proposes that the university bear the cost of incidental expenses associated with these services, clearly state what type of incidental expense and estimated costs the university would be expected to bear.

TRD-200204006
Jesse W. Rogers
President
Midwestern State University
Filed: June 26, 2002

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Texas Natural Resource Conservation Commission

Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit

For the Period of June 7, 2002.

APPLICATION The City of Commerce has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a permit to amend the existing permit (MSW 421) to develop an additional 42.5 acres of the permitted 179.0 acres, in addition to the 43.45 acres that were already filled and closed prior to October 1993. The facility is located approximately 3.5 miles southeast of the center of the City of Commerce in Hunt County, Texas. This application was submitted to the TNRCC on February 6, 2002.

The TNRCC executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue this draft permit. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at City Hall at 1119 Alamo Street in the City of Commerce, Texas, in Hunt County.

MAILING LISTS. You may ask to be placed on a mailing list to obtain additional information regarding this application by sending a request to the Office of the Chief Clerk at the address below. You may also ask to be on a county-wide mailing list to receive public notices for TNRCC permits in the county.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comment or to ask questions about the application. The TNRCC will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

You may submit additional written public comment to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date of newspaper publication of this notice.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comments may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the permit and will forward the application and requests to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

Further information may also be obtained from City Hall of the City of Commerce at the address stated above or by calling the City Offices at (903) 886-1124.

TRD-200203988
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 25, 2002

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Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit

Notice Of Application And Preliminary Decision for a Municipal Solid Waste Permit

For The Period of June 17, 2002.

APPLICATION The Panama Road Landfill, TX, L.P., 801 East College Street, Lewisville, Texas 75057, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a permit to authorize a Type I municipal solid waste landfill facility that will dispose of municipal solid waste, construction-demolition waste, certain special wastes, and Class 2 & 3 nonhazardous industrial waste. The applicant has requested a separate determination of the land use compatibility of the proposed site. The landfill facility is proposed to be located on

a 250.0 acre site approximately 4.0 mile east of Gordon and approximately 4.5 miles southwest of the Santo community on the north side of Interstate Highway 20 in Palo Pinto County, Texas.

The TNRCC executive director has completed the technical review of the land-use compatibility portion of the permit application and has made a preliminary decision that the proposed location is compatible with surrounding land uses. The Executive Director will consider the other technical matters concerning the permit application at another time. The land-use compatibility portion of the permit application and the executive director's preliminary decision are available for viewing and copying at the Palo Pinto County Courthouse, 520 Oak Street, Palo Pinto, Texas 76484, telephone (940) 659-1210; and the Gordon City Hall, 105 Main Street, Gordon, Texas 76453, telephone (254) 693-5676.

MAILING LISTS. You may ask to be placed on a mailing list to obtain additional information regarding this application by sending a request to the Office of the Chief Clerk at the address below. You may also ask to be on a county-wide mailing list to receive public notices for TNRCC permits in the county.

PUBLIC COMMENT / PUBLIC MEETING. The TNRCC held a public meeting at 7:00 pm on March 7, 2002, at the Gordon Community Center, Gordon, Texas; and a second public meeting at 7:00 pm on April 25, 2002, at the Santo Independent School District Elementary Building Cafetorium, Santo, Texas. You may submit additional public comments or request another public meeting about this land-use only compatibility application. The purpose of a public meeting is to provide the opportunity to submit comment or to ask questions about the application. The TNRCC will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

You may submit additional written public comment to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date of newspaper publication of this notice.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comments may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the land-use compatibility portion of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval and will forward the application and requests to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

Further information may also be obtained from Mr. Matt Henry, Panama Road Landfill, TX, L.P., at the address stated above or by calling Mr. Henry at (972) 436-4217.

TRD-200203989
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 25, 2002

Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit

For the Period of June 21, 2002

APPLICATION Hardin County, 300 Monroe, Kountze, Texas 77625-5994, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a permit to amend the existing permit, MSW-2214, to authorize a Type I municipal solid waste landfill facility that will dispose of municipal solid waste, construction-demolition waste, and Class 2 & 3 nonhazardous industrial waste. The landfill facility covers approximately 79 acres in Hardin County, Texas, approximately 3 miles southwest of the City of Kountze on the south side of FM 770. The site is 1/2 mile west of the intersection of FM 770 and S.H. 326. This application was submitted to the TNRCC on January 18, 2001.

The TNRCC executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue this draft permit. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the Hardin County Court House, 300 Monroe, Kountze, Texas 77625-5994. The telephone number is (409) 246-5120.

Further information may also be obtained from the Honorable Billy Caraway, Hardin County Judge at the address stated above or by calling (409) 246-5120.

APPLICATION The City of Commerce has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a permit to amend the existing permit (MSW 421) to develop an additional 42.5 acres of the permitted 179.0 acres, in addition to the 43.45 acres that were already filled and closed prior to October 1993. The facility is located approximately 3.5 miles southeast of the center of the City of Commerce off of Farm to Market Road 1568, in Hunt County, Texas. This application was submitted to the TNRCC on February 6, 2002.

The TNRCC executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue this draft permit. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at City Hall at 1119 Alamo Street in the City of Commerce, Texas, in Hunt County.

Further information may also be obtained from City Hall of the City of Commerce at the address stated above or by calling the City Offices at (903) 886-1124.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. Generally, the TNRCC will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Written pubic comments and requests for a public meeting must be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087 within 30 days from the date of newspaper publication of this notice.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comments may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the permit and will forward the application and requests to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific application; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing list(s) to which you wish to be added and send your request to the TNRCC Office of the Chief Clerk at the address below. Unless you otherwise specify, you will be included only on the mailing list for this specific application.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200203990
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 25, 2002

Notice of Application and Preliminary Decision for Industrial Waste Permits

For the Period of June 10, 2002

APPLICATION AND PRELIMINARY DECISION. SET Environmental, Inc., (formerly Treatment One) 5743 Cheswood, Houston, Harris County, Texas 77087, a commercial industrial hazardous waste management facility has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a permit renewal to authorize the construction and continued operation of 7 existing tanks, 2 proposed tanks, and 6 existing container storage areas for the storage and processing of hazardous wastes and Class 1 industrial solid waste. The facility is located is located at the above address. This application was submitted to the TNRCC on July 22, 2000.

The TNRCC executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the Mancuso Branch Public Library, 6767 Bellfort, Houston, Texas.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. Generally, the TNRCC will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments and requests for a public meeting must be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087 within 45 days from the date of newspaper publication of this notice.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or is on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comment may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the permit and will forward the application and requests to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific application; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing list(s) to which you wish to be added and send your request to the TNRCC Office of the Chief Clerk at the address below. Unless you

otherwise specify, you will be included only on the mailing list for this specific application.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

Further information may also be obtained from SET Environmental, Inc., at the address stated above or by calling Mr. Daniel A. Didier at (713) 645-8710.

TRD-200203991
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 25, 2002

Notice of Deletion of Gulf Metals Industries Site from the State Superfund Registry

The executive director of the Texas Natural Resource Conservation Commission (commission) is issuing this notice of deletion of the Gulf Metals Industries 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 on October 16, 1987 (12 TexReg 3858). The site, including all land, structures, 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. 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.

The site is a former sand and gravel pit that was used for disposal of hazardous materials, including oily sludges, from the 1950s - 1967. From 1965 - 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 commission's Voluntary Cleanup Program and is therefore eligible for deletion from the state registry as provided by 30 TAC §335.344(c)(5).

In accordance with §335.344(b), the commission held a public meeting to receive comments on the intended deletion of the site on June 4, 2002, at the Knights of Columbus Hall, 6320 Madden Lane, Houston, Texas. The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the commission's 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 Texas Health and Safety Code, §361.188(d), a notice will be filed in the real property records of Harris County, Texas stating that the site has been deleted from the state registry.

All inquiries regarding the deletion of the site should be directed to Mr. Joe Shields, Community Relations, Texas Natural Resource Conservation Commission, telephone numbers (800) 633-9363 or (512) 239-0666.

TRD-200203982
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 25, 2002

Notice of Intent to Propose Lyon Property for Listing on the Texas Superfund Registry

The Texas Natural Resource Conservation Commission (TNRCC or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, as amended (the Act), to annually publish a state registry that identifies facilities that 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 most recent registry listing of these facilities was published in the May 24, 2002 issue of the *Texas Register* (27 TexReg 4633-34).

In accordance with §361.184 (a), the commission must publish in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located, a notice of intent to list a facility on the state registry of state Superfund sites. With this publication, the TNRCC hereby gives notice of a facility or area that the executive director (ED) determined eligible for listing and which the ED proposes to list on the state registry. This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the ED. This notice of intent to list this facility was also published on July 3, 2002, in the *Junction Eagle.*

The facility proposed for listing is the Lyon Property site, located on U.S. 385, approximately 1 mile north of the intersection of Farm Road 1871 and U.S. 385, London, Kimble County, Texas. The geographic coordinates of the site are Latitude: 30ø, 34 minutes, 51 seconds North; Longitude: 99ø, 35 minutes, 29 seconds West. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the TNRCC to evaluate potential relative risk to public health and the environment from releases or threatened releases of hazardous substances. The description may change as additional information is gathered on the sources and extent of contamination.

The Lyon property covers six acres in an area adjacent to the Llano River. A small wire burning operation was conducted at the site for metal recovery. The burn site encompassed an area of 75 by 60 feet. The natural grade of the property slopes from the burn site down to the Llano River.

Sampling of soils at the burn site indicated elevated concentrations of cadmium, lead, and total petroleum hydrocarbons. The primary pathway of concern for potential human health and the environmental impacts is the surface water pathway. The site is located on topography that slopes toward the Llano River, a known fishery. The overland flow component begins at the contaminated soil and extends to the Llano River.

A public meeting may be requested regarding the proposed listing of the Lyon Property site on the state Superfund registry. The public meeting must be requested by submitting a written request by 5:00 p.m.,

August 6, 2002. Interested parties may submit a written request for a public meeting or may submit written comments to the commission relative to the proposed listing of the Lyon Property site to the attention of Ms. Carol Dye, Remediation Division, Texas Natural Resource Conservation Commission, MC 143, P.O. Box 13087, Austin, Texas 78711-3087; or by facsimile at (512) 239-2450.

If a public meeting is requested regarding the proposed listing of this facility on the state Superfund registry, the commission shall publish general notice of the date, time, and location of the public meeting in the *Texas Register* and in the *Junction Eagle*. The public meeting notice shall be provided no later than the 31st day before the date of the meeting. If a public meeting is requested, it will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

A portion of the record for this site, including documents pertinent to the ED's determination of eligibility is available for review at the Kimble County Library, 208 North 10th Street, Junction, Texas 76849, during regular business hours. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas 78753; telephone numbers (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Handicapped parking is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

TRD-200203984
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 25, 2002

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The TNRCC staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of TNRCC pursuant to Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 5, 2002**. The TNRCC will consider any written comments received and TNRCC may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within TNRCC's jurisdiction, or TNRCC's orders and permits issued pursuant to TNRCC's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both TNRCC's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at TNRCC's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 5, 2002**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Arsalita Investment, Inc., dba San Pedro Grocery; DOCKET NUMBER: 2001-0131-PST-E; TNRCC ID NUMBER: 10032; LOCATION: 2200 San Pedro Avenue, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c) and §334.10(b)(1)(B), by failing to maintain accurate inventory records demonstrating that effective manual or automatic inventory control was being conducted; 30 TAC §334.10(b)(1)(A), §334.49(e)(2)(B)(ii), and TWC, §26.3475, by failing to maintain corrosion protection records demonstrating that all tests and inspections required for the cathodic protection system have been performed; 30 TAC §334.72 and §334.74, by failing to report a suspected release to the Commission within 24 hours of its discovery and failing to investigate and confirm a suspected release within 30 days of its discovery; 30 TAC §334.21, by failing to pay underground storage tank (UST) fees; PENALTY: $9,375; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Bennard Rowland dba Rowland Dusters; DOCKET NUMBER: 2000-0834-PST-E; TNRCC ID NUMBER: 15260; LOCATION: 13 miles west of U.S. Highway 77 on State Highway 186, Lasara, Willacy County, Texas; TYPE OF FACILITY: crop dusting with private refueling of gasoline; RULES VIOLATED: 30 TAC §334.6 and §334.55(a), by failing to notify the executive director of construction activities prior to initiating the permanent abandonment of USTs in place and having qualified personnel conduct the construction activities, and empty the USTs of residue or residual vapors prior to permanent removal from service; 30 TAC §334.55(e), by failing to conduct a site assessment to determine whether or not any prior releases of the stored regulated product had occurred; 30 TAC §334.10(b)(1)(A), by failing to develop and maintain all records required; 30 TAC §334.49(a) and TWC, §26.3475, by failing to equip the UST system with corrosion protection; 30 TAC §334.50(a)(1)(A) and TWC, §26.3475, by failing to provide a release detection method capable of detecting a release from any portion of the UST system; 30 TAC §334.51(b)(2) and TWC, §26.3475, by failing to equip the UST system with tight-fill fitting, spill containment, and overfill protection equipment; 30 TAC §334.93(a)(2) and §334.93(b)(1), by failing to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation; PENALTY: $12,000; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-5, (903) 525-0380; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Chad Houck dba Rafter H Cattle Company; DOCKET NUMBER: 2001-0454-MWD-E; TNRCC ID NUMBER: none; LOCATION: at the intersection of U.S. Highway 287 and Spur 510, Henrietta, Clay County, Texas; TYPE OF FACILITY: livestock trailer cleaning facility; RULES VIOLATED: 30 TAC §321.254, by failing to obtain authorization to remove, contain, treat, and dispose of waste from commercial livestock trailers; TWC, §26.121, by allowing the discharge of waste and wastewater onto the ground in an impoundment without authorization; PENALTY: $7,000; STAFF

ATTORNEY: Robert Hernandez, Litigation Division, MC 175, (210) 403-4016; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(4) COMPANY: Mr. John Randall Hunt aka Randy Jo Hunt dba Hunt Utility Company; DOCKET NUMBER: 1999-1390-OSS-E; TNRCC ID NUMBER: OS2936; LOCATION: intersection of Highway 190 and Counts Road, Precinct 4, Point Blank, San Jacinto County, Texas; TYPE OF FACILITY: on-site sewage; RULES VIOLATED: 30 TAC §285.50(c) and Texas Health and Safety Code (THSC), §366.071, by entering into an agreement and accepting compensation to perform services, construct, and install an aerobic on-site sewage facility (OSSF) without being an OSSF Installer II, and by expressly representing himself as an Installer II to a designated representative for San Jacinto County and to the TNRCC; PENALTY: $688; STAFF ATTORNEY: Robin Chapman, Litigation Division, MC 175, (512) 239-0497; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Mahmood Jaffer Ali dba JR's Grocery; DOCKET NUMBER: 2001-0954-PST-E; TNRCC ID NUMBER: 0016165; LOCATION: 4627 Highway 146, Baytown, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(7) and THSC, §382.085(b), by failing to maintain records on-site, including results of testing and daily inspections; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by the California Air Resources Board Executive Order, including the absence or disconnection of any component that is part of the approved system; 30 TAC §115.242(3)(B) and THSC, §382.085(b), by failing to maintain a hose in a manner that is not crimped, kinked, or flattened enough to affect flow of vapor; 30 TAC §115.242(3)(C) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system free of defects; 30 TAC §334.50(b)(1)(A), by failing to monitor USTs for releases at a frequency of at least once every month; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test a line leak detector at least once per year for performance and operational reliability; 30 TAC §334.50(b)(2)(A)(ii) and TWC, §26.3475(a), by failing to monitor pressurized piping in a manner which will detect a release from any portion of the piping system; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all UST systems; PENALTY: $14,375; STAFF ATTORNEY: Robin Chapman, Litigation Division, MC 175, (512) 239-0497; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Mike Barnett dba Mike's Lawn Care; DOCKET NUMBER: 2001-1330-AIR-E; TNRCC ID NUMBER: HQ-0124-H; LOCATION: north of Highway 3210, Granbury, Hood County, Texas; TYPE OF FACILITY: lawn care service; RULES VIOLATED: 30 TAC §111.201 and §330.5(a) and THSC, §382.085(b), by failing to abide by the general outdoor burning and disposal prohibitions by burning and improperly disposing of business waste including tree limbs and grass; PENALTY: $1,250; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Forth Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Mitchell and Alvin Kidd dba Old West Mobile Home Park; DOCKET NUMBER: 2001-1193-PWS-E; TNRCC ID NUMBER: 1910045; LOCATION: 7801 McCormick Road, Amarillo, Randall County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2) and THSC, §341.033(d), by failing to conduct and submit routine monthly bacteriological samples; 30 TAC §290.109(g), by failing to notify the public using described procedures for microbial contamination; 30 TAC §290.46(e)(1), by failing to ensure that the facility is operated under the direct supervision of a certified water works operator at all times; 30 TAC §290.118(b) and (g), by exceeding the maximum secondary constituent level of 2.0 milligrams per liter for fluoride in the water and by failing to notify the customers on an annual basis and in writing of the fluoride concentration of the water; 30 TAC §290.46(t), by failing to post a legible system ownership sign at each production, treatment, and storage facility in plain view of the public which includes the name of the water supply and emergency telephone number where a responsible official can be contacted; 30 TAC §290.41(c)(3), by failing to submit to the TNRCC well completion data for review and approval prior to being placed into service; 30 TAC §290.41(c)(3)(N), by failing to install a flow meter on the well pump discharge line in order to assist in the production of water usage records and to assist in more efficient system operation; 30 TAC §290.41(c)(1)(A), by failing to locate ground water sources so there will be no danger of pollution from unsanitary surroundings; 30 TAC §290.46(f)(1) and (2), by failing to maintain reports regarding the chemical and microbiological quality of the water supply, by failing to maintain water system operating records, and failing to make these reports readily available for review during inspection; PENALTY: $9,600; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: Raul Dominguez dba Rado Import/Export Company; DOCKET NUMBER: 2000-1262-AIR-E; TNRCC ID NUMBER: CD-3060-J; LOCATION: Farm-to-Market Road 509 and U. S. Highway 281, Los Indios, Cameron County, Texas; TYPE OF FACILITY: grain transfer station; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain a permit or to satisfy the conditions of an exempt facility before any actual work began; PENALTY: $2,500; STAFF ATTORNEY: Robert Hernandez, Litigation Division, MC 175, (210) 403-4016; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Touche International, Inc.; DOCKET NUMBER: 2000-1311-MSW-E; TNRCC ID NUMBERS: 79557 and 27079; LOCATION: seven miles north of Whitesboro on Bristor Road, Grayson County, Texas; TYPE OF FACILITY: scrap tire storage; RULES VIOLATED: 30 TAC §328.63(b)(1), by failing to obtain a scrap tire storage site registration for storing more than the allowed number of scrap tires on the ground; 30 TAC §328.63(d)(3), by failing to provide a fire protection system; 30 TAC §328.63(d)(2), by failing to provide adequate vector controls to control the growth of mosquitoes and larvae in tires; 30 TAC §328.58(b) and (c), by failing to properly manifest three shipments of scrap tires; 30 TAC §328.54(d), by failing to post identification having the name and place of business of the transporter and the commission registration number on the sides and rear of a vehicle and the rear of a trailer used to transport scrap tires; PENALTY: $11,600; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Forth Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Troy Valderrama dba Done Right Landscaping; DOCKET NUMBERS: 2001-0672-IRR-E and 2001-0673-IRR-E; TNRCC ID NUMBER: none; LOCATION: 12022 Valley Quail Drive, El Paso, El Paso County, Texas; TYPE OF FACILITY: landscaping; RULES VIOLATED: 30 TAC §344.58 and TWC, §34.007(a), by failing to obtain a TNRCC irrigation license; PENALTY: $1,250; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: El Paso Regional Office, 401

E. Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(11) COMPANY: Zana Realty Investments, Inc., dba C & B One Stops, dba Cantu's Texaco, dba Courtesy Mart, and dba J & C Mobil; DOCKET NUMBER: 2001-0945-PST-E; TNRCC ID NUMBERS: 19981, 55731, 17142, and 14941; LOCATIONS: 910 West Wheeler, Aransas Pass, San Patricio County, Texas; 1056 South Commercial Street, Aransas Pass, San Patricio County, Texas; 3815 Old Spanish Trail, Houston, Harris County, Texas; 502 FM 1092, Stafford, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct appropriate inventory control procedures; 30 TAC §334.49(c), and TWC, §26.3475, by failing to inspect and test the corrosion protection system for operability and adequacy of protection once every three years and by failing to conduct, on the impressed current corrosion protection systems, rectifier checks once every 60 days; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475, by failing to monitor USTs for releases at a frequency of at least once a month; 30 TAC §37.815(a) and (b), by failing to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.48(c), by failing to conduct appropriate inventory control procedures; 30 TAC §334.49(c) and TWC, §26.3475, by failing to conduct, on its impressed current corrosion protection system, rectifier checks once every sixty days; 30 TAC §334.50(b)(1)(A), and TWC, §26.3475, by failing to monitor USTs for releases at a frequency of at least once a month; 30 TAC §334.51(b)(2)(c), and TWC, §26.3475, by failing to provide overfill prevention equipment for the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases; and 30 TAC §334.21 by failing to pay outstanding UST fees; PENALTY: $66,000; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200203994
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 25, 2002

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 **August 5, 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 proposed AO is available for public inspection at both 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 an AO should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 5, 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: Adobe Fuels, L.L.C.; DOCKET NUMBER: 2001-1582-PST-E; IDENTIFIER: Enforcement Identification Number 17123; LOCATION: Mathis, San Patricio County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $400; ENFORCEMENT COORDINATOR: John Schildwachter, (512) 239-2355; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(2) COMPANY: Air Products, L.P.; DOCKET NUMBER: 2002-0218-AIR-E; IDENTIFIER: Air Account Number HG-0011-L; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 105, 40 Code of Federal Regulations §63.168(b)(1), and THSC, §382.085(b), by failing to properly calibrate fugitive air monitoring equipment; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Alamoco, Incorporated; DOCKET NUMBER: 2001-1414-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0010710; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and (ii), and the Code, §26.3465 and §26.3467(a), by accepting two deliveries of regulated substances into the underground storage tanks (USTs); 30 TAC §115.254(6) and THSC, §382.085(b), by failing to submit the results of all tests; 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain a copy of the California Air Resource Board (CARB) Executive Order for the Stage II vapor recovery system (VRS); 30 TAC §115.244(1) and THSC, §382.085(b), by failing to conduct daily inspections for the Stage II VRS; and 30 TAC §115.245(1)(B) and (2), and THSC, §382.085(b), by failing to conduct the annual volume-to-liquid ratio test for bootless nozzle assist systems and conduct the annual pressure decay test; PENALTY: $3,240; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Alliance Riggers and Constructors, Ltd.; DOCKET NUMBER: 2002-0096-AIR-E; IDENTIFIER: Air Account Number EE-2011-B; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: steel erection and crane service; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by allegedly having allowed the transfer of gasoline into its storage tank with a reid vapor pressure greater than seven pounds per square inch; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(5) COMPANY: Andrews Transport, Inc.; DOCKET NUMBER: 2002-0317-PST-E; IDENTIFIER: Enforcement Identification Number 17680; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: fuel distribution; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $480; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: APAC-Texas, Inc.; DOCKET NUMBER: 2002-0037-AIR-E; IDENTIFIER: Air Account Number 92-1511-R; LOCATION: near Union Hill, Fannin County, Texas; TYPE OF FACILITY: portable asphalt plant; RULE VIOLATED: 30 TAC §116.115(b)(2) and (c), Air Permit Number 29562, and THSC, §382.085(b), by failing to construct and operate the plant approximately 500 feet away from the nearest receptor and mark the stationary equipment with air account identification numbers; and 30 TAC §334.128(a), by failing to pay above ground storage tank registration annual late fees; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Dennis Ashley dba Ashley Plumbing Company; DOCKET NUMBER: 2002-0211-PST-E; IDENTIFIER: PST Facility Identification Number 0034592; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: plumbing company; 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 to a common carrier a valid, current delivery certificate; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Atlas Roofing Corporation; DOCKET NUMBER: 2002-0134-AIR-E; IDENTIFIER: Air Account Number AC-0055-Q; LOCATION: Diboll, Angelina County, Texas; TYPE OF FACILITY: rigid foam insulation board manufacturing; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), and THSC, §382.085(b), by failing to submit the annual certificate of compliance for Permit Number O-01784; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: BASF Fina Petrochemicals Limited Partnership; DOCKET NUMBER: 2002-0029-AIR-E; IDENTIFIER: Air Account Number JE-0843-F; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: commodity chemicals manufacturing; RULE VIOLATED: 30 TAC §101.5 and THSC, §382.085(b), by failing to prevent the discharge of such quantities of uncombined water as to create a traffic hazard and interfere with normal road use and prevent the unauthorized emissions during an upset; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: CX Transportation, A Division of TIC United Corp.; DOCKET NUMBER: 2002-0391-PST-E; IDENTIFIER: Enforcement Identification Number 16961; LOCATION: Abilene, Taylor County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $0; ENFORCEMENT COORDINATOR: Kimberly McGuire, (512) 239-4761; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(11) COMPANY: City Stop, Incorporated dba City Stop #21; DOCKET NUMBER: 2002-0038-PST-E; IDENTIFIER: PST Facility Identification Number 0015839; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: gasoline service station; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures; and 30 TAC §334.50(b)(1)(A) and (2)(A), and the Code, §26.3475(a) and (c)(1), by failing to monitor USTs for releases and monitor the pressurized piping in a UST system; PENALTY: $33,408; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(12) COMPANY: City of Dalhart; DOCKET NUMBER: 2001-0074-MWD-E; IDENTIFIER: Water Quality Permit Number 10099-001, National Pollutant Discharge Elimination System (NPDES) Permit Number TX005707, and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10099-001; LOCATION: near Dalhart, Hartley County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), §319.11(b), Water Quality Permit Number 10099-001, NPDES Permit Number TX0057207, and the Code, §26.121, by failing to maintain an accurate flow measuring/recording device, conduct analytical testing, abide by permit requirements regarding effluent limits on single grab samples for five-day biochemical oxygen demand and total suspended solids, failing to, at all times, ensure that the facility is properly operated by maintaining adequate dissolved oxygen levels, the chlorine contact chamber, and the sludge drying beds; PENALTY: $24,000; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(13) COMPANY: Derrick Oil & Supply Co., Inc.; DOCKET NUMBER: 2002-0314-PST-E; IDENTIFIER: Enforcement Identification Number 17682; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator has a valid, current delivery certificate; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Dynacast Mfg. Inc.; DOCKET NUMBER: 2002-0168-AIR-E; IDENTIFIER: Air Account Number CS-0037-U and Air Permit Number 9863; LOCATION: New Braunfels, Comal County, Texas; TYPE OF FACILITY: aluminum die casting; RULE VIOLATED: 30 TAC §116.110(a), §116.311(d), and THSC, §382.055(h) and §382.085(b), by allowing unauthorized emissions of air pollutants; 30 TAC §116.115(c), Air Permit Number 9863, and the Code, §382.085(b), by failing to limit plant operations to five days per week and report changes to the plant's emission point sources; PENALTY: $17,500; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: E-Z Shop Cupples, Inc.; DOCKET NUMBER: 2001-1576-PST-E; IDENTIFIER: PST Facility Identification Number 0031959 and Owner Identification Number 56612; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b)(2)(B)(v), by failing to have corrosion protection records available; 30 TAC §334.48(c), by failing to conduct inventory control for all USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and (d)(1)(B)(ii) and the Code, §26.3475, by failing to perform release detection

for product piping, perform annual performance tests on line leak detectors, and reconcile inventory control records; PENALTY: $600; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Earl Scheib of Texas, Inc. dba Earl Scheib Paint and Body No. 177; DOCKET NUMBER: 2001-0322-IHW-E; IDENTIFIER: Solid Waste Registration Number 66885; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: automobile paint and body shop; RULE VIOLATED: 30 TAC §335.4, by allowing the unauthorized discharge of waste that created hazardous levels of lead at the facility; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: FM All-In-One Convenience Stores Inc. dba All-In-One; DOCKET NUMBER: 2002-0040-PST-E; IDENTIFIER: PST Facility Identification Number 0011104; LOCATION: Flower Mound, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each dispenser; 30 TAC §115.246(1), (6), and (7)(A), and THSC, §382.085(b), by failing to maintain a copy of the CARB executive order for the Stage II VRS, maintain a record of Stage II daily inspections, and maintain a record of maintenance conducted on any part of the Stage II equipment; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative receive training and instruction in the operation and maintenance of the Stage II VRS; 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed and submitted and have a current, valid delivery certificate; 30 TAC §334.50(d)(1)(B)(ii) and (iii)(I), by failing to conduct reconciliation of detailed inventory control records and record inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank; PENALTY: $5,200; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Fuller Oil Company, Inc.; DOCKET NUMBER: 2002-0051-PST-E; IDENTIFIER: Enforcement Identification Number 17450; LOCATION: Fannett, Jefferson County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator has a valid, current delivery certificate; PENALTY: $8,800; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Hector Jesus Escobar dba Horizon Truck Wash; DOCKET NUMBER: 2001-1459-IWD-E; IDENTIFIER: Water Quality Permit Number 03033; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: truck wash; RULE VIOLATED: 30 TAC §305.125(1) and (5) and Water Quality Permit Number 03033, by failing to implement irrigation practices, maintain a perennial crop of bermuda grass or similar vegetation over the irrigation area; and provide adequate maintenance of the treatment and irrigation facilities; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Terry McMillan, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(20) COMPANY: John Paul Jones Oil Co., Inc.; DOCKET NUMBER: 2002-0125-PST-E; IDENTIFIER: Enforcement Identification Number 17120; LOCATION: Gonzales, Gonzales County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $400; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(21) COMPANY: K & K Construction, Inc.; DOCKET NUMBER: 2002-0261-AIR-E; IDENTIFIER: Air Account Number MQ-0591-P; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: construction company with land clearing operations; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to follow outdoor burning rules; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Kapalua Fuel & Marine Services, Inc.; DOCKET NUMBER: 2002-0136-PST-E; IDENTIFIER: Enforcement Identification Number 17121; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $400; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(23) COMPANY: Kayeo, Inc. dba Texaco at Parker & Jupiter; DOCKET NUMBER: 2002-0036-PST-E; IDENTIFIER: PST Facility Identification Number 0072097; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: gasoline retail station; 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 ensure that the UST registration and self-certification form is fully and accurately completed and failure to have a current, valid delivery certificate; PENALTY: $400; ENFORCEMENT COORDINATOR: Alayne Furguson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: King Fuels, Inc.; DOCKET NUMBER: 2002-0256-PST-E; IDENTIFIER: Enforcement Identification Number 17612; LOCATION: Porter, Montgomery County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Kingwood Fuels Transport, Inc.; DOCKET NUMBER: 2002-0190-PST-E; IDENTIFIER: Enforcement Identification Number 17433; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery 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.

(26) COMPANY: Lake Ridge Properties, Inc.; DOCKET NUMBER: 2002-0150-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 2330029 and Certificate of Convenience and Necessity Number 11113; LOCATION: Del Rio, Val Verde County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2) and (g), §290.122(c), (formerly 30 TAC §290.106(a) and (e), and §290.103(5)), and THSC, §341.033(d), by failing to collect and submit routine monthly bacteriological samples and provide public notice of the sampling deficiencies; and 30 TAC §290.51(a)(3), by failing to pay outstanding public health service fees; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Michelle

Harris, (512) 239-0492; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(27) COMPANY: Frank Flores dba Lull's Public Scales and Scales Drive In; DOCKET NUMBER: 2002-0084-AIR-E; IDENTIFIER: Air Account Number HN-0454-Q; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: fixed facilities and inspection and weighing services; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent a discharge from any source; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Sandra Hernandez, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(28) COMPANY: Linda Gonzalez dba Manny's Grocery; DOCKET NUMBER: 2001-1536-PST-E; IDENTIFIER: PST Facility Identification Number 0028923; LOCATION: Eldorado, Schleicher County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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 the UST registration and self-certification form and make available a valid, current delivery certificate; 30 TAC §334.49(c)(2)(C), by failing to check the rectifier once every 60 days for impressed current systems; and 30 TAC §334.50(b)(2)(A)(i)(III) and (d)(1)(B)(ii) and (iii)(I), and the Code, §26.3475, by failing to perform annual performance test on the line leak detector, reconcile inventory control records, and conduct inventory volume measurements for regulated substance inputs; PENALTY: $23,125; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(29) COMPANY: Manti Operating Company; DOCKET NUMBER: 2002-0545-AIR-E; IDENTIFIER: Air Account Number PE-0020-B; LOCATION: Fort Stockton, Pecos County, Texas; TYPE OF FACILITY: natural gas treatment and compression plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit a Title V compliance certification; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(30) COMPANY: Nimra Food Mart, Inc.; DOCKET NUMBER: 2002-0013-PST-E; IDENTIFIER: PST Facility Identification Number 0028955; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control; 30 TAC §334.50(a)(1)(A), (b)(2)(A)(ii), (d)(1)(B) and (4), and the Code, §26.3475, by failing to provide a method of release detection and monitor the UST piping for releases; and 30 TAC §334.7(e)(2), by failing to fill out the UST registration form accurately; PENALTY: $4,080; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(31) COMPANY: Nolan Oil Company, Inc.; DOCKET NUMBER: 2002-0241-PST-E; IDENTIFIER: Enforcement Identification Number 17551; LOCATION: Vidor, Orange County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $5,600; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(32) COMPANY: North Texas Trench Burn, Incorporated; DOCKET NUMBER: 2001-1240-AIR-E; IDENTIFIER: Air Account Number 92-2395-L; LOCATION: Grand Prairie, Tarrant County, Texas; TYPE OF FACILITY: portable air curtain trench burner; RULE VIOLATED: 30 TAC §106.496(3), (4), (10), and (13), §116.110(a), and THSC, §382.085(b), by failing to meet the required dimensions and maintain the walls of the trench, limit trench burner operation to eight hours per day or less, stack material below the air curtain, and post operating instructions at the site; PENALTY: $600; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(33) COMPANY: Pacific Fuel Distributors, L.L.C. dba Martinez Mini Mart; DOCKET NUMBER: 2002-0042-PST-E; IDENTIFIER: PST Facility Identification Number 0065615; LOCATION: Fort Worth, Tarrant 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; 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III) and (ii), and (d)(1)(B)(ii) and (iii)(I), and the Code, §26.3475, by failing to have a release detection method capable of detecting a release, perform annual performance test on the line leak detector, perform tightness test for pressurized, suction, and/or gravity piping, reconcile inventory control records on a monthly basis, and conduct inventory volume measurements; 30 TAC §334.49(a) and the Code, §26.3475, by failing to ensure that a method of correction protection is in place; 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed; and 30 TAC §334.51(b)(2)(C) and the Code, §26.3475, by failing to install overfill prevention equipment; PENALTY: $7,600; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(34) COMPANY: City of Prairie View; DOCKET NUMBER: 2001-0152-PWS-E; IDENTIFIER: PWS Number 2370029; LOCATION: Prairie View, Waller County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(e)(2) (now 30 TAC §290.117(e)), by failing to conduct reduced monitoring tap sampling for lead and copper analysis; PENALTY: $313; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: Pumpelly Oil, Inc.; DOCKET NUMBER: 2002-0242-MSW-E; IDENTIFIER: Used Oil Registration Number A85722; LOCATION: Bridge City, Orange County, Texas; TYPE OF FACILITY: transporter of used oil and used oil filters; RULE VIOLATED: 30 TAC §§324.4(2)(C)(i), 324.11(2), and 328.24(a), and THSC, §371.104, by failing to register prior to transporting used oil and used oil filters; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(36) COMPANY: Republic Waste Services of Texas, Ltd. dba Arlington Disposal; DOCKET NUMBER: 2002-0392-PST-E; IDENTIFIER: PST Facility Identification Number 810; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: refuse collection and disposal; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to fully and accurately complete and submit a UST registration and self-certification form; PENALTY: $600; ENFORCEMENT COORDINATOR: Kimberly McGuire, (512) 239-4761; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(37) COMPANY: Save One Stop, Inc.; DOCKET NUMBER: 2001-1572-PST-E; IDENTIFIER: PST Facility Identification Number 0030579; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC 334.10(b)(1)(B) and §334.49(3), by failing to maintain corrosion protection and inventory control records on-site

and available for review; PENALTY: $800; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(38) COMPANY: City of Seadrift; DOCKET NUMBER: 2001-0832-MWD-E; IDENTIFIER: TPDES Permit Number 10822-001; LOCATION: Seadrift, Calhoun County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), TPDES Permit Number 10822-001, and the Code, §26.121, by failing to prevent two unauthorized discharges, maintain adequate plant operations and maintenance, operate the facility to maintain compliance with the permit limits, prevent the discharge of floating solids; and comply with specific sampling procedures; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Carol McGrath, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(39) COMPANY: Small Business Loan Source, Inc.; DOCKET NUMBER: 2002-0341-PST-E; IDENTIFIER: PST Facility Identification Number 0065420; LOCATION: Gonzales, Gonzales 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 the required financial responsibility; 30 TAC §334.7(d)(1)(B), by failing to provide written notice of change in operational status of each tank system; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475, by failing to monitor USTs for releases; and 30 TAC §334.54(b)(2), by failing to assure that, with the exception of vent lines, all piping, pumps, manways and ancillary equipment shall be capped, plugged, locked and/or otherwise secured; PENALTY: $4,400; ENFORCEMENT COORDINATOR: Sarah Slocum, (512) 239-6589; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(40) COMPANY: TEMA Oil & Gas Company; DOCKET NUMBER: 2002-0171-AIR-E; IDENTIFIER: Air Account Numbers LH-0259-W and GB-0540-F; LOCATION: Friendswood, Galveston County, Texas; TYPE OF FACILITY: compressor stations; RULE VIOLATED: 30 TAC §101.360(a) and THSC, §382.085(b), by failing to submit form ECT-3 level of activity certification; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(41) COMPANY: Chang Yong Im dba Times Market #11; DOCKET NUMBER: 2002-0370-PST-E; IDENTIFIER: PST Facility Identification Number 0018034; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain copies of required records pertaining to a UST system; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475, by failing to monitor piping and test a line leak detector; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Edward Moderow, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(42) COMPANY: V.N.H., Inc.; DOCKET NUMBER: 2002-0069-PST-E; IDENTIFIER: PST Facility Identification Number 0055760; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(3) and THSC, §382.085(b), by failing to successfully perform the five year functional testing to verify proper operation of the Stage II VRS; PENALTY: $720; ENFORCEMENT COORDINATOR: Brad Brock, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(43) COMPANY: Yun-Won Kim dba Won Stop; DOCKET NUMBER: 2002-0054-PST-E; IDENTIFIER: PST Facility Identification Number 0046718; LOCATION: Graham, Young 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 accurately complete the UST registration and self-certification form; 30 TAC §334.48(c), by failing to conduct inventory control for all USTs; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475, by failing to monitor for releases; and the Code, §26.121, by allowing the unauthorized discharge of petroleum product into the ground; PENALTY: $14,000; ENFORCEMENT COORDINATOR: George Ortiz, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

TRD-200203975
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 25, 2002

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 (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 5, 2002**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within TNRCC's orders and permits issued pursuant to TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 5, 2002**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to TNRCC in **writing**.

(1) COMPANY: Four G Asphalt, Inc. dba Big Buck Asphalt, Inc.; DOCKET NUMBER: 2001-0724-AIR-E; TNRCC ID NUMBERS: 90-2593-E and 2593B; LOCATION: at the 11 mile marker on the east side of Interstate Highway 35, Laredo, Webb County, Texas; TYPE OF FACILITY: hot mix asphalt plant; RULES VIOLATED: 30 TAC §111.111(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by exceeding permissible visible emissions from its asphalt plant; 30 TAC §116.115(c), TNRCC Permit Number 2593B, Special Condition Number 7 and THSC, §382.085(b), by failing to conduct stack sampling analysis or other tests to prove satisfactory equipment performance and demonstrate compliance with the 0.04 grains per dry standard cubic foot allowable emissions limit within

60 days of being informed by the TNRCC San Antonio Regional Office that visible emissions from the plant had exceeded 5% capacity; PENALTY: $12,500; STAFF ATTORNEY: Robin Chapman, Litigation Division, MC 175, (512) 239-0497; REGIONAL OFFICE: Laredo Regional Office, 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(2) COMPANY: Katy Family YMCA; DOCKET NUMBER: 2001-1472-PWS-E; TNRCC ID NUMBER: 0790348; LOCATION: 15050 Cinco Park Road, Katy, Fort Bend County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2) and THSC, §341.033(d), by failing to collect and submit routine monthly bacteriological samples; 30 TAC §290.109(g), by failing to provide public notice of sampling deficiencies; PENALTY: $1,875; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Khalil El-Ksih dba C & D Groceries; DOCKET NUMBER: 2001-1060-PST-E; TNRCC ID NUMBER: 0053896; LOCATION: intersection of Highway 359 and Halbison Road, Pattison, Waller County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to submit an underground storage tank (UST) registration and self-certification form to the TNRCC; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available a valid, current TNRCC delivery certificate before delivery of a regulated substance; PENALTY: $8,000; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239-0939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Trelson Corporation; DOCKET NUMBER: 2001-0572-IHW-E; TNRCC ID NUMBER: 37923; LOCATION: 625 Humble Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: former sheep skin tannery; RULES VIOLATED: 30 TAC §335.8(a) by failing to remove industrial solid waste from waste management units and to perform closure for those waste management units following abandonment of the facility by the lessee and by failing to remove industrial solid wastes contained in abandoned process units; 30 TAC §335.4 and §335.8(a) and TWC, §26.121, by allowing discharges of industrial solid wastes and the threat of discharges of pollutants into or adjacent to any water in the state by failing to completely remediate discharges of industrial solid wastes resulting from a fire; 30 TAC §335.4 and TWC, §26.121, by allowing discharges of industrial solid wastes and the threat of pollutants by failing to prevent discharges of characteristically hazardous waste into or adjacent to any water in the state; 30 TAC §335.62 and 40 Code of Federal Regulations §262.11, by failing to complete a hazardous waste determination on the tar-like substance which was stored outside in an approximately 1,000-gallon open top tank; PENALTY: $9,500; STAFF ATTORNEY: Robin Chapman, Litigation Division, MC 175, (512) 239-0497; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200203993
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 25, 2002

Notice of Water Quality Applications

The following notices were issued during the period of June 12, 2002 through June 24, 2002.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711- 3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AQUASOURCE DEVELOPMENT COMPANY has applied for a renewal of TPDES Permit No. 13870-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility will be located 3,000 feet west by southwest from the intersection of Wilson Road and Atascocita Road; thence 2,500 feet south in the plant property between Garners Bayou and Atascocita Road; approximately 8,000 feet south of Lakeland School in Harris County, Texas.

CITY OF CENTER has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14352-001, to authorize the discharge of filter backwash water at a daily average flow not to exceed 200,000 gallons per day. The facility is located south of Pinkston Reservoir and west of State Highway 7, approximately three miles east-northeast of the intersection of State Highway 7 and Farm-to-Market Road 2913 in Shelby County, Texas.

CITY OF THE COLONY has applied for a renewal of TPDES Permit No. 13785-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 16,000 gallons per day. The facility is located approximately 1.75 miles south of Farm-to-Market Road 720 and approximately 3.0 miles west of Farm-to-Market Road 423 in Denton County, Texas.

DONOHUE INDUSTRIES INCORPORATED which operates the Lufkin Mill, an integrated pulp and paper mill, has applied for a major amendment to TNRCC Permit No. 00368 to authorize removal of the monitoring and reporting requirements for total zinc at Outfall 001; removal of the effluent limitations for 2,3,7,8-TCDD Equivalents at Outfall 001; removal of the 2,3,7,8-TCDD Equivalents testing requirements for the sludge; removal of the fish tissue sampling requirements; an increase in the biochemical oxygen demand (5-day) effluent limitation at Outfall 001; adding landfill leachate to the authorized wastestreams; removal of Outfall 003; and clarification of the existing authorized wastestreams at Outfall 004 to include boiler blowdown, discharges from the fire water system, and cooling water. The current permit authorizes the discharge of process wastewater, utility wastewater, washdown water, domestic wastewater, and storm water at a daily average dry weather flow not to exceed 20,000,000 gallons per day via Outfall 001; and the discharge of storm water runoff on an intermittent and flow variable basis via Outfalls 002, 003, 004, and 005. The application also includes a request for a temporary variance extension to the existing water quality standards for the water quality based criteria for aluminum for the Angelina River/Sam Rayburn Reservoir in Segment No. 0615 of the Neches River Basin. The variance extension would authorize an additional three-year period in which the Commission will consider the site-specific standards and determine whether to adopt the standards or require the existing water quality standards to remain in effect. The facility is located on the north side of State Highway 103, approximately 0.25 miles east of the intersection of State Highway 103 and Farm-to-Market Road 842 northeast of the City of Lufkin, Angelina County, Texas.

CITY OF ENNIS has applied for a major amendment to TNRCC Permit No. 10443-002 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 2,500,000

gallons per day to a daily average flow not to exceed 4,000,000 gallons per day; to remove effluent limitations and monitoring requirements for cadmium, lead, silver, cyanide and mercury, and to reduce the biomonitoring frequency. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,100,000 gallons per day. The facility is located approximately 1.5 miles south of the intersection of State Highway 34 and Farm-to-Market Road 1183, and approximately 2.5 miles south of the intersection of Interstate Highway 45 and State Highway 34 in Ellis County, Texas.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. 10495-139 which authorizes the discharge of treated domestic wastewater fat an annual average flow not to exceed 995,000 gallons per day. The plant site is located approximately 250 feet west of the intersection of Genard Road and Steffani Lane in Harris County, Texas

K-3 RESOURCES, INC dba BIOSOLIDS MANAGEMENT has applied for a TPDES permit for a new water quality permit to authorize the lime stabilization of domestic wastewater treatment plant sludge and domestic septage from multiple sources. The facility is located inside Dincas Ranch which is located in the far northwestern portion of Harris County, 12 miles west of Tomball, Texas, and 8 miles east of Waller, Texas, in Harris County, Texas.

KATY-HOCKLEY CORP. has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14109-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The plant site is located approximately 300 feet southeast of the intersection of Katy Hockley Cutoff Road and Morton Road in Harris County, Texas.

LONE STAR STEEL COMPANY has applied for a renewal of TPDES Permit No. 00348 which authorizes the discharge of treated domestic wastewater and pretreated oily wastewater at a daily average flow not to exceed 500,000 gallons per day via Outfall 001; the discharge of process wastewater, cooling water, boiler blowdown, and storm water at a daily average flow not to exceed 70,000,000 gallons per day via Outfall 002; the discharge of storm water runoff from Lower Barnes Reservoir on an intermittent and flow variable basis via Outfall 003; the discharge of once through, non-contact cooling water from the powerhouse and storm water on a flow variable basis via Outfall 004; and storm water runoff on an intermittent and flow variable basis via Outfall 005. The applicant operates a steelmaking and pipe manufacturing facility that produces primarily low alloy carbon steel grade pipe and tubular goods. The plant site is located at the intersection of U.S. Highway 259 and State Highway 729, south of the City of Lone Star, Morris County, Texas.

MARY ANN MOORE has applied for a renewal of TPDES Permit No. 11621-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located approximately 3000 feet north of Farm-to-Market Road 2457 and approximately 12 miles northwest of the City of Livingston on the east shore of Lake Livingston in Polk County, Texas.

CITY OF MONT BELVIEU has applied for a renewal of TNRCC Permit No. 11030-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located approximately 1.4 miles north of Interstate Highway 10 and 0.6 mile east of Eagle Drive on the east side of Mont Belvieu in Chambers County, Texas.

CITY OF MURCHISON has applied for a renewal of TPDES Permit No. 13972-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located approximately 2,800 feet northeast of the intersection of Farm-to-Market Road 773 and County Road 1616, adjacent to County road 1616 at the northeast edge of the City of Murchison in Henderson County, Texas.

CITY OF NEW WAVERLY has applied for a renewal of TPDES Permit No. 11020-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 0.6 mile west of the junction of Farm-to-Market Road 1375 and U.S. Highway 75 in Walker County, Texas.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0078565 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 12047-001. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,250,000 gallons per day. The plant site is located on the west side of Buffalo Creek and on the south side of Farm-to-Market Road 3097 approximately 1.5 miles northwest of the intersection of Farm-to-Market Roads 3097 and 549 in the City of Rockwall in Rockwall County, Texas.

OMEGA HEALTHCARE INVESTORS, INC. has applied for a new permit, Proposed Permit No. 14329-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 12,600 gallons per day via surface irrigation of 6.41 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 2.5 miles west of the City of Athens, on the south side of State Highway 31 in Henderson County, Texas. The facility and disposal site are located in the drainage basin of Walnut Creek in Segment No. 0804 of the Trinity River Basin.

SKIDMORE WATER SUPPLY CORPORATION has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14112-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located approximately 1000 feet north of the end of Black Ranch Road and approximately 4,500 feet east and 4,200 feet north of the intersection of Farm-to-Market Road 797 and U.S. Route 181 in Bee County, Texas

TOSHIBA INTERNATIONAL CORPORATION has applied for a major amendment to TNRCC Permit No. 03153, to authorize an additional option for disposal of treated sanitary wastewater and parts washwater via evaporation and irrigation. The current permit authorizes the discharge of treated sanitary wastewater and parts washwater at a daily average flow not to exceed 50,000 gallons per day via Outfall 001, and recirculated non-contact cooling water/once through cooling water at a daily average flow not to exceed 50,000 gallons per day via Outfall 002. The applicant operates a facility which manufactures electric motors, inverters, and other electrical products. The plant site is located at the southwest corner of the intersection of West Little York Drive and Eldridge Parkway, in the extraterritorial jurisdiction of the City of Houston, Harris County, Texas.

WODEN INDEPENDENT SCHOOL DISTRICT has applied for a new permit, Proposed Permit No. 14345-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day via drip irrigation of 2.3 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at the northeast corner of the intersection of Farm-to-Market Road 226 and County Road 414 in Nacogdoches County, Texas. The effluent disposal site is located 1,160 feet east of the intersection of Farm-to-Market Road 226 and County Road 414 in Nacogdoches County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 368 has applied for a minor amendment to TNRCC Permit No. 12044-001 to authorize an interim phase II at a daily average flow not to exceed 900,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day in the final phase. The plant site is located approximately 1 mile east of FM 249 and approximately 1,200 feet south of Boudreaux Road in Harris County, Texas.

CITY OF HENDERSON has applied for a renewal of TPDES Permit No. 10187-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 1.5 miles southwest of the intersection of State Highway 79 and Farm-to-Market Road 225 in Rusk County, Texas.

CITY OF MANOR has applied for a minor amendment to authorize an additional Interim II phase for the discharge of treated domestic wastewater with a daily average flow not to exceed 500,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 840,000 gallons per day. The applicant also requested a correction in the (latitude/longitude) coordinate for the outfall. The facility is located immediately west of New Sweden Road and approximately 0.25 mile south of U.S. Highway 290 in Travis County, Texas.

TRD-200203992
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 25, 2002

Notice of Water Rights Application

Notices mailed during the period June 18, 2002 through June 25, 2002.

APPLICATION 12-3585C Wayne D. Gilliam, 2850 Highway 2247, Comanche, Texas 76442, applicant, seeks to amend Certificate of Adjudication No. 12-3585, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.152 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Certificate of Adjudication No. 12-3585, as amended, authorizes the owner to divert and use not to exceed 17 acre-feet of water per annum from two exempt on channel reservoirs on an unnamed tributary of Martins Creek and Martins Creek, tributary of Copperas (Rush) Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, Brazos River Basin to irrigate 45 acres out of a 118.25 acre-tract of land located in the Josiah Pomeroy Survey, Abstract No. 760, the E.R. Griffith Survey, Abstract No. 411, and the J.B. Bril Survey, Abstract No. 1534 at a maximum diversion rate of 1.66 cfs (745 gpm) Comanche County. Reservoir 1 is located on Martin Creek with a capacity of 16.90 acre-feet of water and reservoir 2 with the capacity of 0.49 acre-feet is located on an unnamed tributary of Martins Creek. The Certificate contains a special condition whereby the above authorization will expire on December 31, 2000. Also included in the Certificate is a perpetual water right that authorizes the owner to divert and use not to exceed 23 acre-feet of water from a 960 acre-foot capacity reservoir to irrigate 45 acres out of the aforesaid 118.25 acre-tract of land at a maximum diversion rate of 2.0 cfs (900 gpm) in Comanche County. The time priority for use of the 10 acre-feet of water for irrigation of 15 acres of land with a maximum combined diversion rate of 0.67 cfs (300 gpm) is July 30, 1973. The time priority for the additional diversion of 7 acre-feet of water and 5 acres of land for irrigation with a maximum diversion rate of 0.99 cfs (445 gpm) is September 2, 1980. The time priority for the diversion of the 23 acre-feet of water per annum from the aforesaid 960 acre-foot capacity reservoir is October 13, 1970. The time priority of owner's right for all other authorization is August 6, 1985. Diversion point 1 is located on reservoir 1 at approximately 32.018 degrees N Latitude, 98.675 degrees W Longitude. Diversion point 2 is located on the perimeter of the reservoir 2 at approximately 32.017 degrees N Latitude, 98.775 degrees W Longitude. Diversion point 3 is located on the perimeter of 960 acre-foot reservoir at approximately 32.024 degrees N Latitude, 98.662 degrees W Longitude. Applicant seeks to amend Certificate of Adjudication No. 12-3585, as amended, by extending or deleting the expiration date of December 31, 2000 for 17 acre-feet of water per annum from the aforesaid exempt reservoirs. Applicant indicated has that Reservoir 2 has been filled in and Coastal Bermuda grass has been planted where the reservoir and dam were located. The application was received on December 15, 2000. Additional information was received April 17, 2002 and June 5, 2002. The application was determined to be administratively complete on June 13, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

APPLICATION 12-3538C. William T. Morris and Frankie Z. Morris, 920 County Road 475, DeLeon, Texas 76444, applicants, seek to amend Certificate of Adjudication No. 12-3538, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.152 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Certificate of Adjudication No. 12-3538, as amended, authorized owners to divert and use not to exceed 30 acre-feet of water per annum from an exempt reservoir impounding 32 acre-feet of water on an unnamed tributary of the Sabana River, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, in the Brazos River Basin to irrigate 60 acres of land out of a 242 acre tract in the H. & T.C. RR Co. Survey No. 39, Abstract No. 461 in Comanche County. The maximum diversion rate is 2.23 cfs (1,000 gpm). The time priority is November 19, 1973. The diversion point is on the perimeter of the aforesaid reservoir at approximately 32.152 degrees N Latitude, 98.615 degrees W Longitude. The Certificate contains a special condition whereby the authorization to divert the water will expire on December 31, 2000. Other special conditions apply. Applicants seek to amend Certificate of Adjudication No.12-3538, as amended, by extending or deleting the expiration date of December 31, 2000. Applicants indicated that they have 12 groundwater wells that can be used as alternate water supply source. The wells produce good quality water at 30-40 gpm. The application was received on December 22, 2000. Additional information was received March 22, 2002. The application was determined to be administratively complete on June 4, 2002. Written public comments and requests for a public meeting should be submitted to the Office of

Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

APPLICATION 12-3471C. Glynn A. Wilson,15524 County Road #122, Ranger, Texas 76420, applicant, seeks to amend Certificate of Adjudication No. 12-3471, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.152 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Certificate of Adjudication No. 12-3471, as amended, authorizes the owner to maintain two exempt dams and reservoirs. Reservoir 1 is on an unnamed tributary of North Colony Creek, tributary of Colony Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, Brazos River Basin, Stephens County and impounds 115 acre-feet of water. Reservoir 2 is on North Colony Creek, tributary of Colony Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, Brazos River Basin, Stephens County and impounds 125 acre-feet of water. Owner is authorized to divert and use not to exceed 100 acre-feet of water from Reservoirs 1 and 2 for agricultural use to irrigate 100 acres out of 826 acres in HT & B RR Co. Survey No. 123, Abstract No. 79; the T & NO RR Co. Survey, Abstract No. 218; the J. F. Oakely Survey, Abstract No. 2040; the G. C. Conway Survey, Abstract No. 1880; and the J. J. Maxwell Survey, Abstract No. 1706 and an additional 50 acres of leased land in the aforesaid T & NO RR Co. Survey, which is located to the adjacent 826 acres in Stephens County. Owner is authorized to divert water from the perimeter of Reservoir 1 at approximately 32.53 degrees N Latitude, 98.737 degrees W Longitude at a maximum diversion rate of 1.6 cfs (725 gpm). Owner is also authorized to divert water from Reservoir 2 at approximately 32.526 degrees N Latitude, 98.737 degrees Longitude at a maximum diversion rate of 0.7 cfs (300 gpm) The time priority for the first 50 acre-feet of water per annum is October 11, 1977 and the time priority for the diversion of the additional 50 acre-feet of water per annum is April 1, 1991. The Certificate contains a special condition whereby the authorization to divert water will expire on December 31, 2000. Other special conditions apply. Applicants seek to amend Certificate of Adjudication No. 12-3471, as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on December 29, 2000. Additional information was received January 23, 2002. The application was determined to be administratively complete on May 3, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

APPLICATION 12-3486C Ronnie and Barbara Love, 5202 FM 571, Ranger, Texas 76470, applicants, seek to amend Certificate of Adjudication No. 12-3486, as amended, pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that notice should be published and mailed pursuant to 30 TAC 295.152 & 295.153 (c) (1) to the water right holders downstream of the diversion point in the Brazos River Basin. Certificate of Adjudication No. 12-3486, as amended, authorizes owners to maintain three existing exempt dams creating 15, 170, and 40 acre-foot capacity reservoirs, respectively, on an unnamed tributary of Salt Branch and Salt Branch, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, Brazos River Basin, Eastland County. Owners are also authorized to divert and use not to exceed 150 acre-feet of water per annum from the aforesaid three reservoirs for agricultural use to irrigate 335 acres in six tracts of land in Eastland County at a maximum diversion rate of 3.67 cfs (1,650 gpm) for reservoir (1) and 2.44 cfs (1,100 gpm) from reservoirs (2) & (3). All three reservoirs are located 13 miles southeast of Eastland. The time priority of owners' right is October 20, 1975. The Certificate contains a special condition whereby the authorization to divert the water will expire on December 31, 2000. Other special conditions apply. Diversion point 1 is located on the perimeter of reservoir 1 at approximately 32.336 degrees N Latitude, 98.607 degrees W Longitude. Diversion point 2 is located on the perimeter of reservoir 2 at approximately 32.339 degrees N Latitude, 98.614 degrees W Longitude. Diversion point 3 is located on the perimeter of reservoir 3 at approximately 32.340 degrees N Latitude, 98.611 degrees W Longitude. Applicant seeks to amend Certificate of Adjudication No. 12-3486, as amended, by extending or deleting the expiration date of December 31, 2000. The application was received on December 19, 2000. Additional information was received March 19, 2002. The application was determined to be administratively complete on May 7, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

APPLICATION 5521A Meyerstein Family Trust, with Arnold H. Meyerstein as trustee, applicant, seeks to amend Water Use Permit No.5521, pursuant to Texas Water Code (TWC) 11.122, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Water Use Permit No. 5521 authorizes the diversion and use of not to exceed 30 acre-feet of water per annum at a maximum diversion rate of 0.22 cfs (100 gpm) from the Guadalupe River, Guadalupe River Basin, in Kerr County for irrigation of 30 acres of land out of a 65.8 acre tract, consisting of 31.1 acres in the J.S. Snyder Survey No. 142, Abstract No. 290, and 34.7 acres in the H. Yeamans Survey No. 575, Abstract No. 378, on the south side of Upper Guadalupe Lake on the Guadalupe River, 1.9 miles northwest of the intersection of State Highways 16 and 27, within the city limits of Kerrville, Kerr County, Texas. Applicant seeks to change the diversion rate from 0.22 cfs (100 gpm) to 2.1 cfs (1,000 gpm). Pursuant to 30 TAC 295.153 and 295.158 (b)(2), notice will be published and sent by first class mail to all the water rights holders of record in the Guadalupe River Basin. The application was received on January 11, 2002. The Executive Director reviewed the application and determined it to be administratively complete on April 22, 2002. Written public comments and requests for a public meeting

should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200203987
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 25, 2002

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North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the January 11, 2002, issue of the *Texas Register* (27 TexReg 407). The selected consultant will develop Freeway Incident Management Course Materials as part of the North Central Texas Council of Governments' Air Quality Improvement Program and the 2000 - 2002 and 2002 - 2004 Transportation Improvement Programs.

The consultant selected for this project is PB Farradyne, a division of Parsons, Brinckerhoff, Quade & Douglas, Inc., 2777 Stemmons Freeway, Suite 1333, Dallas, Texas 75207. The maximum amount of this contract is $125,000. Work on this project is scheduled to begin on June 25, 2002, and all work will be completed by January 31, 2003.

TRD-200203976
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 25, 2002

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Request for Proposals for a Consultant to Conduct a Crosstown Bus Routes Analysis and Needs Assessment for Dallas Area Rapid Transit

CONSULTANT PROPOSAL REQUEST

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultants to conduct a Crosstown Bus Routes Analysis and Needs Assessment for Dallas Area Rapid Transit (DART). The consultant effort will be a ridership profile for the 18 Crosstown routes operated by DART. The study will develop a Crosstown Trip Characteristic Profile and assess the potential for limited-stop and non-stop Crosstown routes. This analysis coupled with a review of the work of DART staff in updating the Five Year Action Plan will be used to develop recommendations for potentially successful limited-stop and non-stop Crosstown routes.

Due Date

Proposals must be submitted no later than 5 p.m., Central Daylight Time, on Friday, August 2, 2002, to Barbara Maley, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. For more information and to obtain copies of the Request for Proposals, contact Barbara Maley at (817) 695-9278.

Contract Award Procedures

The firm selected to perform this study will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 42 United States Code 2000(d) to 2000(d)(1); and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of age, race, color, religion, sex, disability, or national origin in consideration of an award.

TRD-200203999

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 26, 2002

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Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on June 24, 2002, for retail electric provider (REP) certification, pursuant to § §39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Transamerica Industries, Inc. for Retail Electric Provider (REP) certification, Docket Number 26144 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than July 12, 2002. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200204009
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 2002

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Notice of Application for Amendment to Certificate of Operating Authority

On June 20, 2002, Verizon Advanced Data, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its certificate of operating authority (COA) granted in COA Certificate Number 50032. Applicant intends to reflect relinquishment of its certificate.

The Application: Application of Verizon Advanced Data, Inc. for an Amendment to its Certificate of Operating Authority, Docket Number 26005.

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, at P.O. Box 13326, Austin, Texas 78711-3326 no later than July 10, 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 26005.

TRD-200203968
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 24, 2002

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 18, 2002, Adelphia Business Solutions of Texas, L.P. 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 60219. Applicant intends to reflect the change of its name as the result of a corporate restructuring, and discontinue service in the Austin, Dallas, and San Antonio Local Access and Transport Areas.

The Application: Application of Adelphia Business Solutions of Texas, L.P. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 26110.

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, at P.O. Box 13326, Austin, Texas 78711-3326 no later than July 10, 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 26110.

TRD-200203866
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2002

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 19, 2002, Comm South Companies, 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 60012. Applicant intends to remove the resale-only restriction.

The Application: Application of Comm South Companies, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 26118.

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, at P.O. Box 13326, Austin, Texas 78711-3326 no later than July 10, 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 26118.

TRD-200203913
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2002

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Notice of Application for Waiver to Requirements in P.U.C. Substantive Rule §25.181

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 21, 2002, for waiver of the limitation on energy efficiency incentive payments imposed by Public Utility Commission's Substantive Rule §25.181(h)(3).

Docket Title and Number: Application of Central Power and Light Company, Southwestern Electric Power Company, and West Texas Utilities Company for Waiver of the Limitation on Energy Efficiency Incentive Payments Imposed by the commission's Substantive Rule §25.181(h)(3). Docket Number 26133.

The Application: Public Utility Commission's Substantive Rule §25.181(h)(3) limits the amount that an individual energy efficiency service provider and its affiliates may receive to no more than 20% of the total incentive payments available for a particular standard offer contract. The rule permits a utility to petition the commission for a waiver of this limitation if the utility can demonstrate that the utility would not be able to meet its annual energy savings goal under this limitation. The companies provided affidavits which stated that without a waiver of the limitation on the level of incentives during the calendar year 2002, the companies will not be able to attract energy efficiency service providers to their service territories. Therefore, in turn, Applicants stated that they do not expect to meet their annual energy savings goal due to the limitation imposed by the commission's Substantive Rule §25.181(h)(3). The companies seek a waiver of the limitation on incentives only for funds earmarked for their 2002 Commercial and Industrial Standard Offer Programs incentive budgets.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission, 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 26133.

TRD-200204008
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 2002

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Project Number 25819 Notice of Workshop Concerning Transmission Constraints Affecting West Texas Wind Power Generators

The Public Utility Commission (commission) will conduct a public workshop on transmission constraints affecting west Texas wind power generators. The workshop will be held from 9:30 a.m. to 4:00 p.m., Wednesday, July 24, 2002, in the Commissioners' Hearing Room, seventh floor, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas.

The purpose of the workshop is to establish a base of facts regarding the curtailment of existing wind power generating facilities due to operational constraints and insufficient transmission capacity. Interested persons are encouraged to attend the workshop. An agenda and background materials may be obtained from the commission's web site at www.puc.state.tx.us.

The commission is conducting this workshop under Project Number 25819, *PUC Proceeding to Address Transmission Constraints Affecting West Texas Wind Power Generators.* Questions concerning the workshop or this notice should be referred to Richard Greffe, Senior Economist, Market Oversight Division, 512-936-7404. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at 512-936-7136.

TRD-200203914
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2002

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Public Notice of Amendment to Interconnection Agreement

On June 18, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and VoiceStream Wireless Corporation, 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 26114. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission's (commission) 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 26114. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 19, 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 26114.

TRD-200203915
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2002

Public Notice of Amendment to Interconnection Agreement

On June 18, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and 1stTel, Inc., 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 26113. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission's (commission) 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 26113. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 19, 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 26113.

TRD-200203917
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2002

Public Notice of Amendment to Interconnection Agreement

On June 20, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Excel Telecommunications, Inc., 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 26128. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission's (commission) 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 26128. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 23, 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 26128.

TRD-200203934
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2002

Public Notice of Amendment to Interconnection Agreement

On June 20, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and SBC Advanced Solutions, Inc., 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 26129. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission's (commission) 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 26129. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 23, 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 26129.

TRD-200203933
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2002

Public Notice of Amendment to Interconnection Agreement

On June 21, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Paging Professionals of Oklahoma, Inc. doing business as Protel Communications, 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 26142. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission's (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 26142. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 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 26142.

TRD-200203966
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 24, 2002

Public Notice of Amendment to Interconnection Agreement

On June 21, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Navigator Telecommunications, 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 26143. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission's (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 26143. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 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 26143.

TRD-200203967
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 24, 2002

Public Notice of Interconnection Agreement

On June 18, 2002, Direct Telephone Company, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of 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 26116. The joint application and the underlying interconnection agreement is available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26116. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 19, 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 Public Utility 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 26116.

TRD-200203916
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2002

Public Notice of Workshop on Rulemaking to Establish Service Quality Standards Applicable to Wireless Carriers with Eligible Telecommunications Provider (ETP) Status and Questions for Comment

On Tuesday, August 20, 2002 the commission will hold a workshop on Project Number 24522, *Rulemaking to Develop Quality of Service Standards Applicable to Wireless Carriers with Eligible Telecommunications Provider Status to Receive Universal Service Funds*. The workshop will begin at 9:00 a.m. in Hearing Room Gee located on the seventh floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Before the workshop commences, the commission requests that interested persons file comments addressing the questions below. Both substantive and procedural aspects of implementing this proposal will be open for discussion at the workshop. The workshop agenda will not be confined solely to questions proposed by the commission staff; a portion of the workshop will be reserved for open discussion of general or specific issues of interest to attendees.

Questions for comment:

1. Should all of the service objectives and performance benchmarks applicable to dominant certificated telecommunications utilities (DCTUs) as identified in Substantive Rule §§26.52-26.54, apply to wireless carriers that the commission has designated as an eligible telecommunications provider? If not, please identify specifically those sections of the rule that should be changed, modified, or deleted to either make these rules compatible for and applicable to wireless providers or to establish an entirely new quality of service standard rule specifically for wireless carriers with ETP status.

2. Are there any additional service objectives or performance benchmarks not identified in Substantive Rules §§26.52-26.54 that should be applicable to wireless carriers the commission has designated as eligible telecommunications providers?

3. Please identify the service objectives or performance benchmarks that could be adopted to ensure that wireless carriers complete no less than 97% of properly dialed calls?

4. Is it possible to measure decibel loss and impulse noise on wireless facilities? If yes, please explain in detail the level of decibel loss that should be allowed and why.

5. Please identify all wireless transmission service standards that would be equivalent to the wireline transmission requirements contained in Substantive Rule §26.54(c)(7).

6. Please provide any additional comments related to the quality of service standards applicable to wireless carriers with ETP status, that have not been addressed in response to the above questions.

Sixteen copies of comments may be filed with the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326 within 30 days of the date of publication of this notice in the *Texas Register*. All comments should reference Project Number 24522. On or before August 20, 2002, the commission will file an agenda for the workshop, which will be available in Central Records under Project Number 24522. Copies of the agenda will also be available at the workshop.

Questions concerning Project Number 24522 may be referred to James Kelsaw, Telecommunications Division, (512) 936-7338, or Andrew Kang, Legal Division, (512) 936- 7293. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200204010
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 2002

Texas Council on Purchasing from People with Disabilities

Notice of Intent to Contract

Notice is hereby given that the Texas Council on Purchasing from People with Disabilities intends to adopt a contract under §122.019 of the Texas Human Resources Code with TIBH Inc., to administer the State Use Program. The propose contract will allow TIBH to organize and administer Community Rehabilitation Programs (CRPs) that assist persons with disabilities in achieving maximum personal independence by engaging in gainful and useful employment.

Persons who wish to receive copy of the proposed contract should contact Hadassah Schloss, Open Records Administrator, at the Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047.

For all other questions or comments contact the Texas Council on Purchasing from People with Disabilities at (512) 436-3244. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Council on Purchasing from People with Disabilities at (512) 463-3244.

TRD-200203973

Kelvin Moore
Program Administrator
Texas Council on Purchasing from People with Disabilities
Filed: June 25, 2002

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Texas Real Estate Commission

Correction of Error

The Texas Real Estate Commission adopted an amendment to 22 TAC §535.210 concerning fees paid by real estate inspector licensees and applicants. The adoption notice appeared in the June 21, 2002 *Texas Register* (27 TexReg 5521).

The effective date of October 1, 2002 is incorrect. The correct effective date should be September 1, 2002.

TRD-200204005

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Teacher Retirement System of Texas

Correction of Error

The Teacher Retirement System of Texas adopted on an emergency basis 34 TAC §§41.33-41.35 concerning the Texas School Employees Uniform Group Health Coverage Program. The adoption notice appeared in the March 15, 2002 issue of the *Texas Register* (27 TexReg 1951). In addition the Teacher Retirement System of Texas adopted an emergency amendment to §41.33 that was published in the June 21, 2002 issue of the *Texas Register* (27 TexReg 5325). Due to a Texas Register error the expiration date was incorrectly published as July 24, 2002. The correct expiration date should be June 26, 2002.

TRD-200203983

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Texas Water Development Board

Water Bank Fee Schedule

In accordance with Texas Water Code §15.705 and 31 TAC §359.14, the Texas Water Development Board proposes no changes to the existing fee schedule for deposits of a water right or right to use water or portion thereof into the Texas Water Bank (bank) and upon transfer of the water right or right to use water or portion thereof while on deposit in the bank. Section 15.705(b) of the Texas Water Code indicates that the authorized fee is to be used, with interest, only for the administration and operation of the Texas Water Bank. To date, a total of $496 has been collected in water bank fees and deposited in the water bank account of the Water Assistance Fund. This amount is less than one percent (1.0%) of the amount expended to administer the Texas Water Bank since its creation. The annual staff expenses in operating the water bank are estimated to be approximately $10,000 per year. The fees presented in this schedule are not anticipated to increase the current rate of recovery, unless the level of bank activity significantly increases. The fee receipts, should they significantly increase, are anticipated to be utilized to improve the operation of the bank by providing funding to acquire water rights. The proposed Fee for Deposit is capped at a value of $50 to represent the recovery of a typical amount for processing an application upon filing. It is a concern that the Fee for Deposit not be such an amount as to discourage the use of the bank. The Fee for Transfer - One Time Payment is proposed to be a discounted amount in order to provide an advantage for paying the fee in a lump-sum payment. The Extended Fee for Transfer is proposed to be applicable only in those instances where the Executive Administrator finds that the full payment of the fee is onerous to the depositor and executes a letter of agreement with the depositor. The amount of the fee proposed is not discounted, and is receivable as specified in the agreement.

Comments on this proposed fee schedule will be accepted for 30 days following publication and may be submitted to Matt Nelson, Research Division, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

WATER BANK FEE SCHEDULE

Fee for Deposit

(a) The fee for deposit for the water right or right to use water or portion thereof shall be one percent (1.0%) of the value of the water right or right to use water or portion thereof, up to a maximum fee of $50 per water right or right to use water or portion thereof. The payment of the fee for deposit must be received by the Texas Water Development Board (Board) within sixty (60) calendar days of the date of the letter of notification from the Board's Executive Administrator of acceptance of the water right or right to use water or portion thereof for deposit into the bank.

(b) The value of a water right or right to use water or portion thereof shall be calculated upon deposit into the bank as the value placed on the water right or right to use water or portion thereof by the depositor. For a deposit of the water right, the depositor shall calculate the value of a water right as the sale price to be received from a proposed sale. For a deposit of the right to use water, the depositor shall calculate the value as the dollar amount per annum anticipated to be received from the sale of water multiplied by the number of years of the proposed sale.

Fee for Transfer - Valuation of Right Upon Transfer

The value of the sale of a water right upon transfer shall be the total value of the sale, expressed in a dollar amount. The value of the right to use water or portion thereof shall be calculated as the total value, expressed in a dollar amount, receivable under contract for the right to use water.

Fee for Transfer - One Time Payment

The fee for transfer of the water right or right to use water shall be nine-tenths of one percent (0.9%) of the value of the water right or right to use water. The depositor of the water right or right to use water shall remit the full amount of the fee, based on the cited rate, in a single payment to the Board within sixty (60) calendar days of the depositor's receipt of payment for the transfer. This fee is applicable for each transfer of the water right or right to use water while on deposit in the bank.

Extended Fee for Transfer

In those instances where the Board's Executive Administrator (or his representative) determines that the Fee for Transfer - One Time Payment may be unduly onerous to the depositor, the depositor may remit an Extended Fee for Transfer over an extended time period in accordance with conditions agreed to by the Executive Administrator and the depositor. This agreement shall have the form of a letter of agreement, signed by both parties to the agreement and shall be legally binding under the applicable laws of the State of Texas and the United States of America. This Extended Fee for Transfer of the water right or right to use water shall be one percent of the value upon transfer of the water right or right to use water. The depositor of the water right or right to use water shall remit the fee payments in accordance with the terms of the letter of agreement.

Water Trust Deposits and Transfers

All fees under this schedule that are associated with the deposit and transfer of a water right or right to use water or a portion thereof into

the Texas Water Trust are waived in accordance with 31 TAC §359.14 of the Board's rules.

TRD-200203867
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: June 20, 2002

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Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

Some MAC positions are vacant and several will expire on August 31, 2002. Therefore, the Texas Workers' Compensation Commission invites all qualified individuals to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee.

Commissioners for the Texas Workers' Compensation Commission appoint the MAC members, which are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the public.

The purpose and tasks of the Medical Advisory Committee are outlined in the Texas Workers' Compensation Act, §413.005, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines.

The Medical Advisory Committee meetings are scheduled for every month of the year; however, meetings may occur less frequently, and must be held at least quarterly each fiscal year during regular commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

During a primary member's absence, an alternate member must attend meetings of the Medical Advisory Committee , subcommittees, and work groups to which the primary member is appointed. The alternate may attend all meetings and shall fulfill the same responsibilities as primary members, as established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

Medical Advisory Committee representative positions currently open and/or those expiring August 31, 2002 include:

1. Public Health Care Facility Primary and Alternate;
2. Private Health Care Facility Primary;
3. M.D. Primary and Alternate;
4. Osteopath Primary and Alternate;
5. Chiropractor Primary;
6. Dentist Primary and Alternate (both presently vacant);
7. Physical Therapist Primary and Alternate;
8. Podiatrist Primary and Alternate;
9. Occupational Therapist Primary;
10. Medical Equipment Supplier Primary and Alternate;
11. R.N. Primary and Alternate;
12. Employer Representative Primary (presently vacant) and Alternate;
13. Employee Representative Primary and Alternate;
14. General Public Representative 2 Primary and Alternate.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the commission's website at *"http://www/twcc.state.tx.us"* and then clicking on *Events*, *Calendar*, *Medical Advisory Committee*. Applications may also be obtained by calling Jane McChesney at 512-804-4855, or Ruth Richardson at 512-804-4850.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY: The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE: The purpose of the Medical Advisory committee is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION: Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the Medical Advisory Committee.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the Medical Advisory Committee, each of whom shall meet the qualifications of an appointed member.

TERMS OF APPOINTMENT: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two

terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the Medical Advisory Committee.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MEDICAL ADVISORY COMMITTEE MEMBERS:

Primary Members:

Make recommendations on medical issues as required by the Medical Review Division.

Attend the Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members:

Attend the Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of Medical Advisory Committee proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a Medical Advisory Committee meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a Medical Advisory Committee meeting.

COMMITTEE OFFICERS: The chairman of the Medical Advisory Committee is designated by the Commissioners. The Medical Review Division will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

RESPONSIBILITIES OF THE CHAIRMAN: Preside at Medical Review Division meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a Medical Review Division meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate: a. Preparation of a suitable agenda; b. Planning Medical Advisory Committee activities; c. Establishing meeting dates and calling meetings; d. Establishing subcommittees; e. Recommending Medical Advisory Committee members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on Medical Advisory Committee meetings.

COMMITTEE SUPPORT STAFF: The Director of Medical Review will provide coordination and reasonable support for all Medical Advisory Committee activities. In addition, the Director will serve as a liaison between the Medical Advisory Committee and the Medical Review Division staff of TWCC, and other commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the Medical Advisory Committee and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for Medical Advisory Committee use.

Maintaining Medical Advisory Committee records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the Medical Advisory Committee.

Maintaining attendance records.

SUBCOMMITTEES: The chairman shall appoint the members of a subcommittee from the membership of the Medical Advisory Committee. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS: When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the Medical Advisory Committee.

WORK PRODUCT: No member of the Medical Advisory Committee, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the Medical Advisory Committee, a subcommittee, or a work group.

MEETINGS: Frequency of Meetings. Regular meetings of the Medical Advisory Committee shall be held at least quarterly each fiscal year during regular commission working hours.

CONDUCT AS A MAC MEMBER: Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for Medical Advisory Committee Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among Medical Advisory Committee members;

Accurately represent their affiliations and notify the Medical Advisory Committee chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the Medical Advisory Committee:

a. in advertising to promote themselves or their business.

b. to gain financial advantage either for themselves or for those they represent; however, members may list Medical Advisory Committee membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attention: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the Medical Advisory Committee Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200203995
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: June 26, 2002

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TA**C*) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TA**C*.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TA**C*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.............950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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