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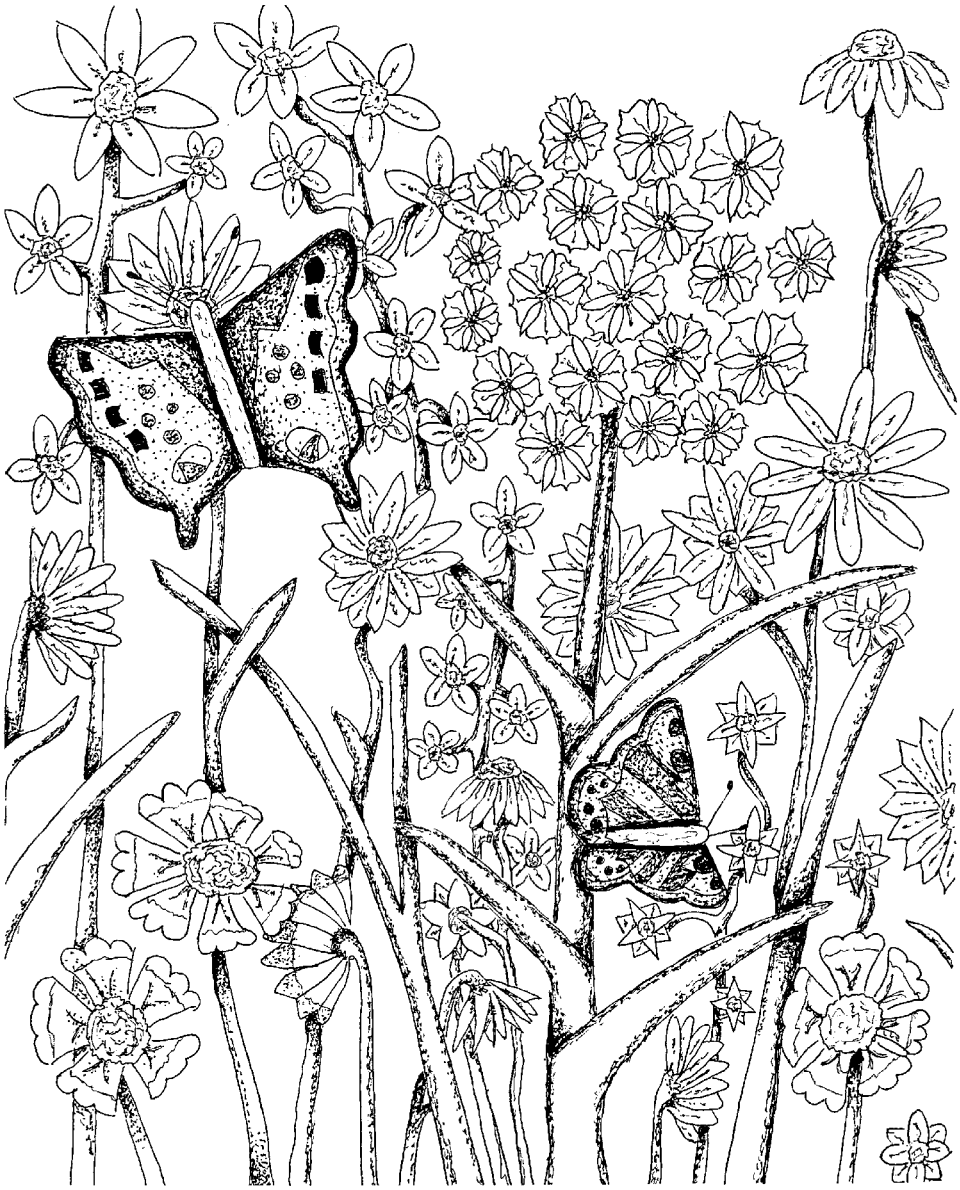

This month's front cover artwork:

Artist: *Jessica Phillips*
10th grade
Rockwall High School

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

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

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

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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

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

THE GOVERNOR

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

Appointments

Appointment for April 27, 2001

Appointed to the Texas Commission on Law Enforcement Officer Standards and Education for a term to expire August 30, 2003, David N. James of Carrollton (replaced Charles Williams of Marshall who is deceased).

Appointments for April 30, 2001

Appointed to the Texas Skill Standards Board for a term at the pleasure of the Governor, Jeanne I. Hatfield of Dallas (replaced Wayne Mixon of Seminole who resigned).

Appointed to the Veterans Land Board for a term to expire December 29, 2004, M.S. Mike Ussery of Amarillo (replaced Neal Thomas Jaco of San Antonio whose term expired).

Appointments for May 2, 2001

Appointed to the Texas Racing Commission for a term to expire February 1, 2007, Michael Giles Rutherford of Houston (replaced Larry Christopher of Crockett whose term expired).

Appointed to the Texas Real Estate Commission for terms to expire January 31, 2007: Paul H. Jordan of Georgetown (replaced Deanna Mayfield of San Angelo whose term expired); Louise E. Hull of Victoria (replaced Jay Brummett of Austin whose term expired); and John Walton of Lubbock (replaced Christine T. Folmer of El Paso whose term expired).

Appointments for May 3, 2001

Appointed to the Texas Parks and Wildlife Commission for terms to expire February 1, 2007: Philip O'B. Montgomery, III of Dallas (replaced Richard Heath of Carrollton whose term expired) and Joseph B.C. Fitzsimons of San Antonio (replaced Nolan Ryan of Alvin whose term expired).

Appointments for May 4, 2001

Appointed to the Texas Commission on Jail Standards for terms to expire January 31, 2007: Judge K. Lee Hamilton of Abilene (replaced Larry Craig of Tyler whose term expired) and Evelyn (Kelly) McVay of Nacogdoches (reappointed).

Appointed to the Upper Neches River Municipal Water Authority:

for a term to expire February 1, 2005, Robert E. McKelvey of Palestine (replaced Tom Broyles of Palestine who is deceased);

for a term to expire February 1, 2007, Joe M. Crutcher of Palestine (reappointed).

Appointments for May 7, 2001

Appointed to the Texas Diabetes Council:

for a term to expire February 1, 2003, Mary-Ann Galley of Houston (replaced Rosa Valenzuela of El Paso who resigned);

for terms to expire February 1, 2007: Lawrence B. Harkless, DPM of San Antonio (reappointed); Lenore Frances Katz of Dallas (replaced Thomas McCann of Mt. Pleasant whose term expired); Margaret G. Pacillas of El Paso (replaced Maria Alen of McAllen whose term expired); and Jeffrey A. Ross, DPM of Bellaire (replaced John Fitts of Dallas whose term expired).

Appointments for May 8, 2001

Appointed to the Texas Board of Architectural Examiners for terms to expire January 31, 2007: Gordon Earl Landreth of Corpus Christi (reappointed); Janet Forgey Parnell of Canadian (replaced Paula Day of Fort Worth whose term expired); and Linda Diane Steinbrueck of Driftwood (replaced Cleveland Turner of Amarillo whose term expired).

Appointed to the Texas Commission on Private Security for terms to expire January 31, 2007: Joan Thompson Neuhaus of Houston (reappointed); Cephus S. "Dusty" Rhodes of El Paso (replaced Jess Ann Thomason of Midland whose term expired); and Linda J. Sadler of Lubbock (replaced Matthew Washington of Bellaire whose term expired).

TRD-200102606

Rick Perry, Governor

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OFFICE OF THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0371

Mr. Jim Nelson Commissioner, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494

Re: Whether a school district trustee may serve as a volunteer teacher in the same district (RQ-0318-JC)

S U M M A R Y

A trustee of the Pearland Independent School District is barred by the common-law doctrine of incompatibility from simultaneously serving as a part-time volunteer teacher in a regular academic classroom for a single semester.

Opinion No. JC-0372

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

Re: Whether certain types of property at new facilities qualify for a tax exemption as pollution-control property under section 11.31 of the Tax Code (RQ-330-JC)

S U M M A R Y

Add-on pollution-control devices and methods of production that limit pollution at new facilities are entitled to a tax exemption under section 11.31 of the Tax Code. The Texas Natural Resource Conservation Commission must administer the tax exemption to grant exemptions to only that portion of property that actually controls pollution.

Opinion No. JC-0373

The Honorable Carole Keeton Rylander, Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528

Re: Whether the value of property subject to a tax increment financing agreement under Local Government Code chapter 374 may be deducted from a school district's total taxable value, and related questions (RQ-0303-JC)

S U M M A R Y

Section 403.302 of the Government Code requires the Comptroller to conduct annual studies to determine the total value of taxable property within Texas school districts. Subsection 403.302(d)(8) of the Government Code requires the Comptroller to deduct from the market value of property taxable by a school district any property value that is subject to a tax increment financing agreement entered into under Local Government Code, chapter 374, subchapter D. The deduction is not optional, but is required by statute.

The predecessor of Local Government Code chapter 374, subchapter D was unconstitutional when adopted. It was not impliedly validated by the 1981 adoption of article VIII, section 1-g of the Texas Constitution authorizing tax increment financing, but it was validated in 1987 when the predecessor statute was reenacted in the codification of laws relating to local government. A municipality may not adopt tax increment financing under Local Government Code, chapter 374, subchapter D unless it holds an election as required by section 374.031(a) of that statute.

Opinion No. JC-0374

Ms. Sandy Smith, Executive Director, Texas Board of Professional Land Surveying ,7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752

Re: Whether a registered professional land surveyor may provide a competitive bid to the primary contractor of a contract with a governmental entity (RQ-0321-JC)

S U M M A R Y

If a governmental entity's contract with a prime contractor requires professional services, either expressly or in fact, then the governmental entity has entered into a contract that includes professional services as a component part and the contract is subject to the Professional Services Procurement Act, Tex. Gov't Code Ann. ch. 2254, subch. A (Vernon 2000). Assuming that the intent of the Texas Board of Professional Land Surveying's competitive-bidding rule is to mirror the Act's prohibitions, then the rule prohibits a surveyor from submitting competitive bids to a prime contractor in connection with a governmental contract, at either the planning and design or construction phase of a project. Although the Professional Services Procurement Act does not obligate a professional to determine whether a contract is subject to the Act's prohibition against competitive bidding, a contract or arrangement entered into in violation of the Act is expressly made "void as against public policy" by section 2254.005. See id. § 2254.005.

Opinion No. JC-0375

The Honorable Mike Moncrief, Chair, Committee on Human Services, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068

Re: Whether a contractual requirement that a superintendent of schools attend executive sessions of meetings of her board of trustees violates the Open Meetings Act (RQ-0327-JC)

S U M M A R Y

A contractual provision requiring a superintendent of schools to attend all executive sessions of her board of trustees is valid under the Open Meetings Act, Tex. Gov't Code Ann. ch. 551 (Vernon 1994 & Supp. 2001).

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

TRD-200102533
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: May 4, 2001

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Request for Opinions

RQ-0377-JC

The Honorable Delwin Jones Chair, Redistricting Committee, Texas State Senate, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether the City of Lubbock Fire Department may provide "First Responder" services within the boundaries of the Lubbock County Hospital District (Request No. 0377-JC)

Briefs requested by June 4, 2001

RQ-0378-JC

Mr. Ron Allen, Executive Director, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998

Re: Whether a veterinarian may dispose of an animal held for nonpayment of fees, and related questions (Request No. 0378-JC)

Briefs requested by June 3, 2001

RQ-0379-JC

The Honorable Leslie C. Acker, Garza County Attorney, 300 West Main Street, Post, Texas 79356

Re: Whether a county may expend funds to expand a child care center (Request No. 0379-JC)

Briefs requested by June 3, 2001

RQ-0380-JC

The Honorable Edwin E. Powell, Jr., Coryell County Attorney, P.O. Box 796, Gatesville, Texas 76528

Re: Release of a "provisional autopsy report" under the Public Information Act (Request No. 0380-JC)

Briefs requested by June 3, 2001

For further information, please call 512-463-2110.

TRD-200102608
Rick Gilpin
Assistant Attorney General
Office of the Attorney General
Filed: May 9, 2001

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 69. CENTRAL PURCHASING
SUBCHAPTER C. MANAGEMENT OF VEHICLES

1 TAC §69.35, §69.36

The Office of the Attorney General proposes new Subchapter C, relating to the management of vehicles, and new §69.35. and §69.36, relating to State Vehicle Management Plan and Restrictions on Assignment of Vehicles. House Bill 3125, 76th Texas Legislature, mandated the Office of Vehicle Fleet Management, under the direction of the Council on Competitive Government, to develop and implement a vehicle management plan to improve the administration and operation of the state's fleet. The management plan was adopted by the Council of Competitive Government on October 11, 2000. House Bill 3125, now codified in Government Code § 2171, requires state agencies to adopt rules consistent with the plan.

Becky Pestana, Assistant Attorney General, has determined that for each year of the first five-year period the new subchapter is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section. There are no anticipated fiscal implications to local government or local economies.

Ms. Pestana also has determined that for each year of the first five-year period the new subchapter is in effect the public benefit anticipated as a result of enforcing the rule will be the assurance of greater utilization and management of the fleet vehicles operated by the agency. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Written comments on the proposed new subchapter may be submitted to Becky Pestana, Assistant Attorney General, at the Office of the Attorney General, General Counsel Division, P.O. Box 12548, Austin, TX, 78711-2548, (512) 936-2912, or by e-mail to becky.pestana@oag.state.tx.us.

The new subchapter is proposed under Government Code § 2171.1045, which requires agencies to adopt rules relating to the assignment and use of their vehicles.

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

§69.35. State Vehicle Management Plan.

To the extent applicable, the agency adopts the State Vehicle Management Plan as adopted by the Office of Vehicle Fleet Management, under the direction of the Council on Competitive Government, on October 11, 2000.

§69.36. Restrictions on Assignment of Vehicles.

(a) Each agency vehicle, with the exception of a vehicle assigned to a field employee or a vehicle used for undercover and/or surveillance activities, shall be assigned to the agency motor pool and be available for check-out.

(b) The agency may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the agency makes a written determination that the assignment is critical to the needs and mission of the agency.

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

Filed with the Office of the Secretary of State, on May 1, 2001.

TRD-200102490
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: June 17, 2001
For further information, please call: A.G. Younger at (512) 463-2110.

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Texas Health and Human Services Commission (HSSC) proposes an amendment to §355.112, concerning attendant compensation rate enhancement, in its Rate Analysis chapter. The purpose of the amendment is to clarify the definition of an attendant, add the Deaf Blind Multiple Disabilities Waiver program, and clarify the enrollment process. The amendment also revises the enrollment process to allow enrollments to "roll over" unchanged to the following year, unless the provider changes their enrollment status during the open enrollment period and revises the procedures for enrolling new facilities. The proposal states that a contract on vendor hold for 60 days for failure to submit an accountability report will become a nonparticipant until the report is submitted and the recoupments are made. Detail was added to the description of the calculation of the attendant compensation rate component to better describe the actual calculation. The proposal clarifies that, when a provider serves clients in both the Residential Care (RC) program and the Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) program in a single facility, the spending requirement is determined for both programs together and not separately. The proposal also clarifies the effective date for contractors who voluntarily withdraw contracts from being participants or request to reduce the enhancement levels and clarifies the group or individual status of a provider that acquires a participating contract through a contract assignment.

The Texas Department of Human Services (DHS) is simultaneously proposing a related amendment to 40 TAC §20.112 in this issue of the *Texas Register*.

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

Commissioner Don Gilbert has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of adoption of the proposed rules will be that providers will be given greater clarification of the definition of direct care staff; the enrollment process will be easier for those providers who do not want to change their enrollment status; the enrollment process has been clarified; and Deaf Blind Multiple Disabilities contracts will be able to participate and receive enhanced rates. This revision will require a provider desiring to enroll as a participant under a new contract to submit an enrollment contract amendment, rather than being enrolled automatically. The proposal will remove a contract from participation and will stop paying higher participation rates if the provider is on vendor hold for more than 60 days for failure to submit an accountability report. The calculation of attendant compensation is described in greater detail under the proposed rule. The proposal clarifies for CBA AL/RC and RC providers that, when they operate both programs in one facility, the spending requirement is based on the entire facility. The proposal clarifies the effective date of a reduction in the reimbursment rate of a contractor who voluntarily withdraws a contract from participation or requests to reduce the enhancement level of a contract. Finally, the proposed rule clarifies the group or individual status of a provider that obtains a contract through a contract assignment. There will be no adverse economic effect on large, small, or micro businesses, because the proposal is a clarification of administrative practices. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Alisa Jacquet at (512) 438-4952 in DHS's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-120, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

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

The amendment implements the Government Code §531.003 and §531.021(b).

§355.112. Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the Primary Home Care, including Family Care (PHC/FC); Day Activity and Health Services (DAHS); Residential Care (RC); Community Living Assistance and Support Services (CLASS) - Direct Service Agency; Community Based Alternatives (CBA) - Home and Community Support Services (HCSS); Deaf-Blind Multiple Disabilities Waiver (DBMD); Consumer-Managed Personal Assistance Services (CMPAS) and CBA - Assisted Living/Residential Care (AL/RC) programs are eligible to participate in the attendant compensation rate enhancement.

(b) Definition of attendant. An attendant is the unlicensed caregiver providing direct assistance to the clients with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) (No change.)

(2) Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attendant supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, and laundry and housekeeping staff. In the case of PHC/FC, CLASS, CBA HCSS, and DBMD staff other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(3) (No change.)

(4) An attendant also includes medication aides in the RC and AL/RC program.

(c) Attendant compensation cost center. This cost center will include employee compensation, contract labor costs, and personal vehicle mileage reimbursement for attendants as defined in subsection (b) of this section.

(1) Attendant compensation is the allowable compensation for attendants defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs [~~Compensation of Employees~~]) and required to be reported as either salaries and/or wages, including payroll taxes and workers' compensation, or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title (relating to Specifications for Allowable and Unallowable Costs) to be reported as costs applicable to specific cost report line items, except as noted in paragraph (3) of this subsection, are not to be included in this cost center.

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

(d) (No change.)

(e) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined. The Texas Department of Human Services (DHS) may conduct additional enrollment periods during a rate year.

(f) Enrollment contract amendment. An initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. [~~All contracted providers must submit an enrollment contract amendment during the open enrollment period.~~] On the initial enrollment contract amendment the provider must specify for each contract a [~~his~~] desire to participate or [~~his desire~~] not to participate. The participating provider must specify for each program the desire [~~if he wishes~~] to have all participating contracts be considered as a group or as individuals [~~individually~~] for purposes related to the attendant compensation rate enhancement. For the PHC/FC program, the participating provider must also specify if he wishes to have either priority 1, nonpriority, or both priority 1 and nonpriority services participating in the attendant compensation rate enhancement. If the PHC/FC provider selects to have their contracts participating as a group, then the provider must select to have either priority 1, nonpriority, or both priority 1 and nonpriority services participate for the entire group of contracts. For providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs. After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level; a provider whose participating contracts are being considered as a group can request to have them considered as individuals; and a provider whose participating contracts are being considered as individuals can request to have them considered as a group. Requests to modify a provider's enrollment status during an open enrollment period must be received by DHS's Rate Analysis Department by the last day of the open enrollment period as per subsection (e) of this section. Providers from which DHS's Rate Analysis Department has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation and group or individual status in effect during the open enrollment period within available funds. To be acceptable, an enrollment contract amendment must be completed according to DHS instructions, signed by an authorized signatory as per the DHS Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and legible. [~~The provider also must submit with the contract amendment all required documentation to the DHS in a manner specified by DHS. Any provider failing to submit an acceptable enrollment contract amendment by the end of the open enrollment period will be a nonparticipating contract for the entire rate year following the open enrollment period.~~]

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract delivering its first day of service to a DHS client on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to DHS instructions, signed by an authorized signator as per the Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and received by DHS's Rate Analysis Department within 30 days of DHS's mailing of notification to the provider that such an enrollment contract amendment must be submitted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (m) until: [~~New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract delivering its first day of service to a DHS client on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment are not considered new contracts. New contractors must complete the enrollment contract amendment specified in subsection (f) of this section within 30 days of notification by DHS. Any provider failing to submit an acceptable enrollment contract amendment within 30 days of notification by DHS will be a nonparticipating contract for the remainder of the rate year. New contracts will receive the attendant compensation rate as specified in subsection (l) of this section until:~~]

(1) for new contractors specifying the desire not to participate on an acceptable enrollment contract amendment, the attendant compensation rate component is as specified in subsection (m) of this section. [~~based on the enrollment contract amendment information received, participating contracts will have their attendant compensation rate adjusted effective on the first day of the month following receipt of an acceptable enrollment contract amendment.~~]

(2) for new contractors specifying the desire to participate on an acceptable enrollment contract amendment the [~~based on the enrollment contract amendment information received, nonparticipating contracts will have their~~] attendant compensation rate component is adjusted as specified in subsections (l) and (n) [~~subsection (m)~~] of this section retroactive to the first day of their contract. [~~attendant compensation rate will be adjusted effective on the sixty-first day of the contract with DHS.~~]

(3) for new contracts from which an acceptable enrollment contract amendment is not received, the attendant compensation rate component is as specified in subsection (m) of this section.

(h) Attendant Compensation Report submittal requirements. Attendant Compensation Reports must be submitted by participating contracted providers as follows.

(1) Annual report. Participating contracted providers will provide DHS, in a method specified by DHS, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all participating contracts within one program of the provider. The aggregate report must include contracts that are new, excluded from participation,

voluntary withdrawal from participation, and contract assignments, as defined in subparagraphs (B)-(E) of this paragraph, which were part of the group for any portion of the rate year. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. [~~The aggregate report must include excluded from participation, new, and contract assignment contracts (for the legal entity accepting the contract assignment), as defined in subparagraphs (A)-(E) of this paragraph, which were part of the group for any portion of the rate year. A participating contract which has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w)(3) of this section will be considered to have participated on an individual basis for compliance with reporting requirements.~~] This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by DHS. Contracted providers participating for less than a full year must provide Attendant Compensation Reports as follows.

(A) (No change.)

(B) In cases where a participating provider changes ownership through a contract assignment [~~from one legal entity to another legal entity~~], the owner prior to the change of ownership must submit an Attendant Compensation Report, covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by DHS. The owner after the change of ownership must submit an Attendant Compensation report within 60 days of the end of the rate year, covering the period from the effective date of the contract assignment as determined by DHS to the end of the rate year. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C)-(D) (No change.)

(E) A participating provider who is a new contractor as per subsection (g) of this section must submit an Attendant Compensation Report within 60 days of the end of the rate year, covering the period from the [~~sixty-~~]first day of the month following receipt by DHS's Rate Analysis Department of an acceptable enrollment contract amendment as per paragraph (g)(1) of this section [~~contract as determined by DHS~~] through the end of the rate year.

(2) Six-month report. Within 60 days of the end of the first six months of the rate year, participating [~~Participating~~] contracted providers will provide DHS, in a method specified by DHS, a six-month Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of February of the rate year. [~~DHS will place on vendor hold contracted providers failing to submit an acceptable six-month Attendant Compensation Report within 60 days of the last day of February of the rate year until DHS receives and processes an acceptable report.~~] The report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all participating contracts within one program of the provider. [~~If the provider requested participation as a group the report must be submitted as a single aggregate report covering all participating contracts within one program of the provider.~~] Participating providers will use this six-month report to assist them in determining their level of compliance with the spending requirements and to take any appropriate action necessary to come into compliance with the spending requirements. The provider is responsible for the management of attendant compensation expenditures in compliance with the spending requirements stated in subsection (s) of this section.

(3) (No change.)

(4) Vendor hold. DHS will place on hold the vendor payments for any contractor who does not submit an Attendant Compensation Report completed in accordance with all applicable rules and instructions by the due dates described in this subsection. This vendor hold will remain in effect until an acceptable Attendant Compensation Report is received by DHS. Participating contractors who do not submit an annual Attendant Compensation Report completed in accordance with all applicable rules and instructions within 60 days of the vendor hold being placed will become nonparticipants until the first day of the month after all of the following conditions are met:

(A) the provider submits an acceptable annual Attendant Compensation Report;

(B) the provider submits a separate Attendant Compensation Report from the beginning of the current rate year to the date they were disenrolled as a participant;

(C) the provider repays to DHS funds that are identified for recoupment from subsection (s) of this section; and

(D) DHS receives, in writing by certified mail, a request from the provider to be restored to the participant status.

(i)-(j) (No change.)

(k) Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to DHS a signed enrollment contract amendment as described in subsection (f) of this section, before the end of the enrollment period. Participation is determined separately for each program specified in subsection (a) of this section, except that for providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs. For PHC/FC participation is also determined separately for priority 1 and nonpriority services. Participation will remain in effect, subject to availability of funds, until the provider notifies DHS, in accordance with subsection (x) of this section, that it no longer wishes to participate or until DHS excludes the contract from participation for reasons outlined in subsection (u) of this section. Contracts voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by DHS. Contracts excluded from participation will have their participation end effective on the date determined by DHS.

(l) Determination of attendant compensation rate component for participating contracts. For each of the programs identified in subsection (a) of this section attendant compensation rate enhancement increments associated with each enhanced attendant compensation level will be determined for participating contracts from subsection (k) of this section. The attendant compensation rate enhancement increments will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement increments will be determined on a per-unit-of-service basis applicable to each program or service. [~~Determination of attendant compensation rate component participating contracts. For each of the programs identified in subsection (a) of this section an attendant compensation rate component will be calculated for participating contracts from subsection (k) of this section and for the first 60 days of a new contract from subsection (g) of this section as follows.~~]

[(1) Determine for each contract included in the cost report data base used in the determination of rates in effect on September 1, 1999, the attendant compensation cost center from subsection (c) of this section.]

[(2) Adjust the cost center data from paragraph (1) of this subsection, as specified in §355.108 of this title (relating to Determination of Inflation Indices), to inflate the costs to the prospective rate year.]

[(3) For each contract included in the cost report data base used in the determination of rates in effect on September 1, 1999, divide the result from paragraph (2) of this subsection by the units of service and multiply the result by 1.044 for all programs in subsection (a) of this section except for RC and AL/RC which are multiplied by 1.07. The result is the attendant compensation rate component for participating contracts and the first 60 days of new contracts.]

[(4) The cost base from paragraph (1) of this subsection used in determining the attendant compensation rate component will not change over time, except for adjustments for inflation from paragraph (2) of this subsection. DHS may recommend adjustments to the rates in accordance with §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).]

(m) Determination of attendant compensation rate component for nonparticipating contracts. For each of the programs identified in subsection (a) of this section DHS will calculate an attendant compensation rate component [will be calculated] for nonparticipating contracts as follows.

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

(3) For each contract included in the cost report data base used in determination of rates in effect on September 1, 1999, divide the result from paragraph (2) of this subsection by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS the median cost per unit of service is selected. For all other programs the units of service are summed until the median hour of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied [and multiply the result] by 1.044 for all programs in subsection (a) of this section except for RC and AL/RC which is multiplied by 1.07. The result is the attendant compensation rate component for nonparticipating contracts.

(4) (No change.)

(n)-(r) (No change.)

(s) Spending requirements for participating contracts. DHS will determine from the Attendant Compensation Report, as specified in subsection (h) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The providers' compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report for each participating contract if the provider requested participation individually for each contract. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w)[(3)] of this section will be considered to have participated on an individual basis for compliance with the spending requirement for the owner prior to the termination or contract assignment. If the provider specified that he wished to have all participating contracts be considered as a group for purposes related to the attendant compensation rate enhancement, as specified in subsection (f) of this section, compliance with the spending requirement is based on the total attendant compensation as reported on the single aggregate attendant compensation report described in subsection (h) of this section. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering services to both RC and CBA AL/RC clients in the same facility whose compliance is determined by combining both programs. DHS will calculate recoupment, if any, as follows.

(1) (No change.)

(2) The adjusted attendant compensation per unit of service from paragraph (1) of this subsection will be subtracted from the accrued attendant compensation revenue per unit of service to determine the amount to be recouped by DHS. If the adjusted attendant compensation per unit of service is greater than or equal to the accrued attendant compensation revenue per unit of service, there is no recoupment.

(3) (No change.)

(t)-(v) (No change.)

(w) Contract assignments. The following applies to contract assignments.

(1) Contracts participating under the prior legal entity will continue participation under the legal entity accepting the contract assignment. When the provider or legal entity accepting the contract assignment has their contracts participating as individuals, participation in the attendant compensation rate enhancement confers to the provider or legal entity accepting the contract assignment. When the provider or legal entity accepting the contract assignment has their contracts participating as a group, the contract will participate with the group of the legal entity accepting the contract assignment for purposes related to the attendant compensation rate enhancement. When the new owner has no contracts participating, the individual or group status of participating contracts under the old owner will transfer to the new owner.

[(2) When the contract assignment is a change only in the organizational structure or name of the legal entity, the provider or legal entity accepting the contract assignment is responsible for the reporting requirements in subsection (h) of this section and for any recoupment amount owed to DHS for the entire rate year identified, even if part of the rate year was under the responsibility of the previous legal entity.]

(2) [(3)] When the contract assignment is an ownership change from one legal entity to a different legal entity, DHS will place a vendor hold on the payments of the existing contracted provider until DHS receives an acceptable Attendant Compensation Report specified in subsection (h)(1)(B) of this section and until funds identified for recoupment from subsection (s) of this section are repaid to DHS. DHS will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid by the existing contracted provider's vendor payments that are being held, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to DHS. Failure to repay the amount due [or submit an acceptable payment plan] within 60 days of notification will result in placement of a vendor hold on all DHS contracts controlled by the responsible entity and will bar the responsible entity from enacting new contracts with DHS until repayment is made in full.

(x) Voluntary withdrawal. Participating contracts wishing to withdraw from the attendant compensation rate enhancement must notify DHS in writing by certified mail. The requests will be effective the first of the month following the receipt of the request. Contracts voluntarily withdrawing must remain nonparticipants for the remainder of the rate year [and are excluded from participation the following

~~rate year~~]. Providers whose contracts are participating as a group must request withdrawal of all the contracts in the group.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce [~~a reduction to~~] their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to DHS by certified mail. These requests will be effective the first of the month following [~~30 days from~~] the receipt of the request. Providers whose contracts are participating as a group must request the same reduction for all of the contracts in the group.

(z)-(cc) (No change.)

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

Filed with the Office of the Secretary of State, on May 3, 2001.

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Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
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For further information, please call: (512) 438-3734

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SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR THE INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR) PROGRAM

1 TAC §355.451, §355.456

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.451, concerning definitions and general reimbursement information, and §355.456, concerning rate setting methodology.

Background and Summary of Factual Basis for the Rules

Section 531.021, Government Code, entitled "Administration of Medicaid Program," provides, among other things, that HHSC adopt rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program. The amendments describe how interim rates for state-operated facilities in the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program in Texas will be established.

Explanation

The amendments will maximize the state's opportunity to draw federal funds to cover allowable costs in state-operated facilities. The amendments will simplify the rate setting process for state-operated facilities. Currently, the state sets a separate rate for each state-operated facility, resulting in 54 different rates. The amendments will result in one rate for large state-operated facilities (Medicaid certified capacity of 17 or more) and another rate for small state-operated facilities (Medicaid certified capacity of 16 or less).

Subsection (a) of §355.451 is amended to add a definition of "interim rate." Subsection (b) is amended to specify that interim rates for state-operated facilities are prospective and uniform for each class of state operated facility on a statewide basis and settled on an annual basis.

The proposed amendment to §355.456 is intended to establish 2 classes of state generated facilities for purposes of settling interim rates--large facilities (those with a Medicaid certified capacity of 17 or more on the first day of the month immediately preceding a rate's effective date) and small facilities (those with a Medicaid certified capacity of 16 or less on the first day of the month immediately preceding a rate's effective date). For a facility certified after the effective date of a reimbursement rate, the facility will be classified in accordance with the Medicaid certified capacity in effect on the date of initial certification.

Public Benefit

Fiscal Note

Don Green, Chief Financial Officer, has determined that for the first five years that the proposed amendments are in effect, there is no anticipated fiscal impact resulting from the adoption of the amendments. No additional costs will be borne by local governments as a result of the proposed amendments, nor is there any anticipated impact of revenues of state or local government.

Mr. Green has determined that during the first five years that the proposed amendments are in effect, the public will benefit from adoption of the amendments because the amendments will maximize the state's opportunity to draw federal funds to cover allowable costs in state operated facilities and simplify the rate setting process by setting two rates instead of 54 rates.

Small and Micro-business Impact Analysis

The proposed amendments will not result in additional costs to persons required to comply with the rules, nor do the rules have any anticipated adverse effect on small or micro-businesses. The rules will not affect local employment.

Regulatory Analysis

HHSC has determined that none of the proposed amended rules is a "major environmental rule" as defined by §2001.0225, Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has assessed the takings impact of the proposed amended rules under Texas Government Code, §2007.043. HHSC has determined that this action does not restrict or limit an owner's right to property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking. The majority of the proposed amendments are administrative, non-substantive, and do not impose any new regulatory requirements. The proposed amended rules are reasonably taken to fulfill requirements of state law.

Public Comment

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 9:30 a.m., Wednesday, May 23, 2001, in the Texas Department

of Mental Health and Mental Retardation Central Office Auditorium in Building 2 at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Tera Cardella, at least 72 hours prior to the hearing at (512) 206-5854 or at the TDY phone number of Texas Relay, 1-800-735-2988.

Public comment may be submitted in writing to Steve Lorenzen, Director, Medicaid Rates Setting, Health and Human Services Commission, by mail addressed to 4900 North Lamar Boulevard, 4th Floor, Austin, Texas 78751, or by facsimile to (512) 424-6586. Comments must be submitted by 5:00 p.m., Monday, June 4, 2001. Further information may be obtained by calling Steve Lorenzen at (512) 424-6633.

Statutory Authority

The amendments are proposed under §531.021(b), Government Code, which requires HHSC to adopt reasonable rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program; and §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of HHSC under Chapter 531, Government Code.

The proposed amended rules implement §531.021(b), Government Code, concerning the adoption of rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, and §32.0281, Human Resources Code, concerning the adoption of rules regarding Medicaid reimbursement rates.

§355.451. Definitions and General Reimbursement Information.

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

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

(8) Interim rate--Rate paid to a state-operated facility prior to settlement conducted in accordance with §355.456(e)(1)(B) of this title (relating to Rate Setting Methodology).

(9) [~~(8)~~] Person--An individual, partnership, corporation, association, governmental subdivision or agency, or a public or private organization of any character.

(10) [~~(9)~~] Provider--Any person with whom TDMHMR has an ICF/MR provider agreement.

(11) [~~(10)~~] Provider agreement--Any written agreement that obligates TDMHMR to pay money to a person for goods or services under the Title XIX Medical Assistance Program.

(12) [~~(11)~~] Rebase--The revision to the underlying assumptions on which the modeled rates are calculated, including revisions to staffing ratios, pay structure, the composition of direct care staff, or other cost factors used in the formula for modeling the rates.

(13) [~~(12)~~] State-operated facility--An ICF/MR for which a facility or division of TDMHMR is the provider.

(14) [~~(13)~~] TDMHMR--The Texas Department of Mental Health and Mental Retardation or its designee.

(b) TDMHMR reimburses providers for services provided to eligible recipients in ICFs/MR. There are two types of facilities: non-state operated and state-operated.

(1) (No change.)

(2) State-operated facilities.

(A) Interim rates [~~Rates~~] for state-operated facilities are uniform statewide by class [~~set prospectively based on each facility's historical cost pattern with adjustments for inflation~~]. There is no differentiation based on client level-of-need categories. Interim rates are set prospectively with annual settlement.

(B) Classes of state-operated facilities. Classes of state-operated facilities are based upon facility size.

§355.456. Rate Setting Methodology.

(a) Types of facilities. There are two types of facilities for purposes of rate setting: state-operated and non-state operated. Facilities [~~Non-state operated facilities~~] are further divided into [~~by~~] classes that are determined by the size of the facility.

(b) (No change.)

(c) Classes of state-operated facilities. There is a separate interim rate for each class of state-operated facilities, which are as follows:

(1) Large facility--A facility with a Medicaid certified capacity of 17 or more as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(2) Small facility--A facility with a Medicaid certified capacity of 16 or less as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

[~~(c) State-operated facilities. There are no classes of state-operated facilities. State-operated facilities are reimbursed on a facility-based per diem rate that is determined by each facility's allowable costs, inflated forward to the rate period. The reimbursement rates include residential, day, and comprehensive medical services.~~]

(d) (No change.)

(e) Reimbursement [~~Rate~~] determination for state-operated facilities. Except as provided in paragraph (2) of this subsection and subsection (f) of this section, state-operated facilities are reimbursed an interim rate with a settlement conducted in accordance with paragraph (1)(B) of this subsection. HHSC will adopt the interim reimbursement rates for state-operated facilities in accordance with §§355.701-355.709 [~~Subchapter F~~] of this title [~~chapter (relating to General Reimbursement Methodology for all TDMHMR Medical Assistance Programs)~~] and this subchapter. [~~Rates are facility specific, determined prospectively, and cost related. A per diem rate for each facility, which is based on the total projected allowable costs for selected cost centers, is divided by the total days of service the facility delivered either in the rate period or in the cost reporting period.~~]

(1) State-operated facilities certified prior to January 1, 2001, will be reimbursed using an interim reimbursement rate and settlement process. [~~Reimbursement rates for state-operated facilities are based on the most current costs reported on their cost reports.~~]

(A) Interim reimbursement rates for state-operated facilities are based on the most recent cost report accepted by HHSC.

(B) Settlement is conducted each state fiscal year by class of facility. If there is a difference between allowable costs and

the reimbursement paid under the interim rate, including applied income, for a state fiscal year, federal funds to the state will be adjusted based on that difference.

(2) A state-operated facility certified on or after January 1, 2001, will be reimbursed using a pro forma rate determined in accordance with §355.702(i) of this title (relating to Method for Cost Determination). A facility will be reimbursed under the pro forma rate methodology until HHSC receives an acceptable cost report which includes at least 12 months of the facility's cost data and is available to be included in the annual interim rate determination process.

~~[(2) Costs for each facility are divided into three groups: salaries and benefits, comprehensive medical, and other. These costs are inflated by the factors identified in §355.704 of this title (relating to Determination of Inflation Indices). Each facility will have its own per diem rate.]~~

~~[(3) Reimbursement rates for newly certified state-operated facilities are based on a pro forma model. The pro forma rate is the average of all available similarly sized state-operated facilities' per diem rates for that particular rate year. Newly certified facilities will be required to submit three-month cost reports to reflect costs incurred during the first 90 days of certified operation. These costs will be used to determine the facility's specific per diem rate within 180 days of certification.]~~

(f) (No change.)

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

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

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SUBCHAPTER F. GENERAL REIMBURSEMENT METHODOLOGY FOR ALL MEDICAL ASSISTANCE PROGRAMS

1 TAC §355.781

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.781, concerning rehabilitative services reimbursement methodology.

Background and Summary of Factual Basis for the Rules

Section 531.021, Government Code, entitled "Administration of Medicaid Program," provides, among other things, that HHSC adopt rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program. The amendments describe how an interim, uniform, statewide rate with a cost related year-end settlement for each rehabilitative service type in Texas will be established. The amendments also provide that the interim rate will be determined prospectively and at least annually.

Explanation

The costs for rehabilitative services have varied significantly across providers and across services. This variation is caused by providers adjusting their delivery methods and costs in order to address local conditions. This variation in costs has resulted in rate variances from year to year that cause disruption and an inability on the part of the industry to reasonably predict revenue. In order to maintain the flexibility in service delivery rules and bring more stability to costs and rates, the proposed amendments will ensure that individual providers will be reimbursed for the reasonable costs they incur delivering services to meet their local needs.

The amendments specify in subsection (a) that providers are reimbursed a uniform, statewide, interim rate with a cost-related year-end settlement. The interim rate is determined prospectively and at least annually. An interim rate is set for each service type. New subsection (b) defines "interim rate," "service type," and "unit of service." Existing subsection (b), which addresses reimbursement during the initial reimbursement period, and existing subsection (c), which addresses reimbursement during subsequent periods, are deleted, as is a sentence in new subsection (c)(1). Those provisions are no longer necessary because HHSC has collected sufficient reliable cost data to establish interim rates for each service type.

New subsection (d) is revised to delete other provisions that are no longer necessary because HHSC has collected sufficient reliable cost data to establish interim rates for each service type. Language in new subsection (d) is revised to reflect current HHSC usage and to describe the interim rate methodology and allowable and unallowable costs in paragraph (3). New paragraph (4) in subsection (d) describes the year-end settlement process.

Fiscal Note

Don Green, Chief Financial Officer, has determined that for the first five years that the proposed amendments are in effect, there is no anticipated fiscal impact resulting from the adoption of the amendments. No additional costs will be borne by local governments as a result of the proposed amendments. The financial costs to the state will decrease.

Public Benefit

Mr. Green has determined that during the first five years that the proposed amendments are in effect, the public will benefit from adoption of the amendments because they bring more stability to costs and rates and ensuring that individual providers will be reimbursed for the reasonable costs they incur delivering services to meet their local needs.

Small and Micro-business Impact Analysis

The proposed amendments will not result in additional costs to persons required to comply with the rules, nor do the rules have any anticipated adverse effect on small or micro-businesses. The rules will not affect local employment.

Regulatory Analysis

HHSC has determined that none of the proposed amended rules is a "major environmental rule" as defined by §2001.0225, Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the

state. The proposed amendments are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has assessed the takings impact of the proposed amended rules under Texas Government Code, §2007.043. HHSC has determined that this action does not restrict or limit an owner's right to property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking. The majority of the proposed amendments are administrative, non-substantive, and do not impose any new regulatory requirements. The proposed amended rules are reasonably taken to fulfill requirements of state law.

Public Comment

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 9:30 a.m., Wednesday, May 23, 2001, in the Texas Department of Mental Health and Mental Retardation Central Office Auditorium in Building 2 at 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Tera Cardella, at least 72 hours prior to the hearing at (512) 206-5854 or at the TDY phone number of Texas Relay, 1-800-735-2988.

Public comment may be submitted in writing to Steve Lorenzen, Director, Medicaid Rates Setting, Health and Human Services Commission, by mail addressed to 4900 North Lamar Boulevard, 4th Floor, Austin, Texas 78751, or by facsimile to (512) 424-6585. Comments must be submitted by 5:00 p.m., Monday, June 4, 2001. Further information may be obtained by calling Steve Lorenzen at (512) 424-6633.

Statutory Authority

The amendments are proposed under §531.021(b), Government Code, which requires HHSC to adopt reasonable rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program; and §531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of HHSC under Chapter 531, Government Code.

The proposed amended rules implement §531.021(b), Government Code, concerning the adoption of rules and standards to govern the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, and §32.0281, Human Resources Code, concerning the adoption of rules regarding Medicaid reimbursement rates.

§355.781. Rehabilitative Services Reimbursement Methodology.

(a) General information.

(1) The Texas Health and Human Services Commission (HHSC) will reimburse qualified rehabilitative services providers for rehabilitative services provided to Medicaid-eligible persons with mental illness.

(2) HHSC determines reimbursement according to §§355.701 - 355.709 of this subchapter, relating to General Reimbursement Methodology for all Texas Department of Mental Health and Mental Retardation Medical Assistance Programs. Rehabilitative services providers are reimbursed a uniform, statewide, interim rate with a cost-related year-end settlement. The interim rate is determined prospectively and at least annually. An interim rate is set for each service type. [~~The reimbursement is uniform and determined prospectively and at least annually. Reimbursement may be determined more often if HHSC determines it to be necessary.~~]

(b) Definitions.

(1) Interim rate--Rate paid to a rehabilitative services provider prior to settlement conducted in accordance with subsection (d)(4) of this section.

(2) Service type--Types of Medicaid reimbursable rehabilitative services as specified in §419.453 of this title (relating to Definitions); §419.456 of this title (relating to Community Support Services); §419.457 of this title (relating to Day Programs for Acute Needs); §419.458 of this title (relating to Day Programs for Skills Training); §419.459 of this title (relating to Day Programs for Skills Maintenance); and §419.460 of this title (relating to Rehabilitative Treatment Plan Oversight):

(A) Adult day programs--acute needs;

(B) Adult day programs--skills training;

(C) Adult day programs--skills maintenance;

(D) Child day program--acute needs;

(E) Child day program--skills training;

(F) Individual community support services--professional;

(G) Individual community support services--para-professional;

(H) Small group community support services--professional;

(I) Small group community support services--para-professional; and

(J) Rehabilitative treatment plan oversight.

(3) Unit of service--The amount of time an individual, eligible for Medicaid rehabilitative services or non-Medicaid rehabilitative services (or parent or guardian of the person of an eligible minor), is engaged in face-to-face contact with a person described in §419.455(d) of this title (relating to Rehabilitative Services: General Requirements) plus any time spent by such person traveling to and from the off-site location of the eligible individual to provide the contact . The units of service are as follows:

(A) Individual and group community support services--up to 1/2 hour;

(B) Day programs--up to 1 hour; and

(C) Rehabilitative treatment plan oversight--one contact.

[~~(b) Reimbursement during initial reimbursement period.~~]

[~~(1) For the initial reimbursement period beginning January 1, 1997 and until such time as HHSC determines that cost data collected as described in subsection (d) of this section are reliable, rehabilitative services providers will be reimbursed utilizing estimated costs to determine pro forma rates. The pro forma rates will be developed based on the most recent salary data obtained from the Texas Medical Association and the National Survey of Hospital and Medical School Salaries. Salaries will be based on median salary rates and adjusted as appropriate for Texas-specific salaries. The Personal Consumption Expenditures (PCE) Chain-Type Index will be used to inflate~~

~~the 1994 salaries to the rate period. Rates are cost based using staffing requirements as specified in §419.455 of this title (relating to Rehabilitative Services: General Requirements); §419.456 of this title (relating to Community Support Services); §419.457 of this title (relating to Day Programs for Acute Needs); §419.458 of this title (relating to Day Programs for Skills Training); §419.459 of this title relating to Day Programs for Skills Maintenance); and §419.460 of this title (relating to Rehabilitative Treatment Plan Oversight).]~~

~~[(2) HHSC will collect cost data as described in subsection (d) of this section.]~~

~~[(3) HHSC will calculate rates using the process described in subsection (e) of this section when reliable rehabilitative services provider cost data becomes available.]~~

~~[(c) Reimbursement during subsequent periods. At such time that reliable cost data become available the reimbursement will be developed using HHSC's cost report process as described in subsections (d) and (e) of this section.]~~

(c) [~~(d)~~] Reporting of Costs.

(1) Cost reporting. Rehabilitative services providers must submit information quarterly, unless otherwise specified, on a cost report formatted according to HHSC's specifications. [~~From the data, HHSC will develop and implement cost-based, statewide, uniform reimbursements for rehabilitative services.~~] Rehabilitative services providers must complete the cost report according to the rules and specifications set forth in this section.

(2) Reporting period and due date. Rehabilitative services providers must prepare the cost report to reflect rehabilitative services provided during the designated cost report reporting period. The cost reports must be submitted to HHSC no later than 45 days following the end of the designated reporting period unless otherwise specified by HHSC.

(3) Extension of the due date. HHSC may grant extensions of due dates for good cause. A good cause is one that the rehabilitative services provider could not reasonably be expected to control. Rehabilitative services providers must submit requests for extensions in writing to HHSC before the cost report due date. HHSC will respond to requests within 10 workdays of receipt.

(4) Failure to file an acceptable cost report. If a rehabilitative services provider fails to file a cost report according to all applicable rules and instructions, HHSC will notify TDMHMR to place the rehabilitative services provider on hold until the rehabilitative services provider submits an acceptable cost report.

(5) Allocation method. If allocations of cost are necessary, rehabilitative services providers [~~provider~~] must use and be able to document reasonable methods of allocation. HHSC adjusts allocated costs if HHSC considers the allocation method to be unreasonable. The rehabilitative services provider must retain work papers supporting allocations for a period of three years or until all audit exceptions are resolved (whichever is longer).

(6) Cost report certification. Rehabilitative services providers must certify the accuracy of cost reports submitted to HHSC in the format specified by HHSC. Rehabilitative services providers may be liable for civil and/or criminal penalties if they misrepresent or falsify information.

(7) Cost data supplements. HHSC may require additional financial and statistical information other than the information contained on the cost report.

(8) Review of cost reports. HHSC reviews each cost report to ensure that financial and statistical information submitted conforms to all applicable rules and instructions. The review of the cost report includes a desk audit. HHSC reviews all cost reports according to the criteria specified in §355.703 of this title (relating to Basic Objectives and Criteria for Review of Cost Reports). If a rehabilitative services provider fails to complete the cost report according to instructions or rules, HHSC returns the cost report to the rehabilitative services provider for proper completion. HHSC may require information other than that contained in the cost report to substantiate reported information.

(9) On-site audits. HHSC may perform on-site audits on all rehabilitative services providers that participate in the Medicaid program for rehabilitative services. HHSC determines the frequency and nature of such audits but ensures that they are not less than that required by federal regulations related to the administration of the program.

(10) Notification of exclusions and adjustments. HHSC notifies rehabilitative services providers of exclusions and adjustments to reported expenses made during desk reviews and on-site audits of cost reports.

(11) Access to records. Each rehabilitative services provider must allow access to all records necessary to verify cost report information submitted to HHSC. Such records include those pertaining to related-party transactions and other business activities engaged in by the rehabilitative services provider. If a rehabilitative services provider does not allow inspection of pertinent records within 14 days following written notice HHSC will notify TDMHMR to place the rehabilitative services provider on vendor until access to the records is allowed. If the rehabilitative services provider continues to deny access to records, TDMHMR may terminate the rehabilitative services provider agreement with the rehabilitative services provider.

(12) Record keeping requirements. Rehabilitative services providers must maintain service delivery records and eligibility determination for a period of five years or until any audit exceptions are resolved (whichever is later). Rehabilitative services providers must ensure that records are accurate and sufficiently detailed to support the financial and statistical information contained in cost reports.

(13) Failure to maintain adequate records. If a rehabilitative services provider fails to maintain adequate records to support the financial and statistical information reported in cost reports, HHSC allows 30 days for the rehabilitative services provider to bring record keeping into compliance. If a rehabilitative services provider fails to correct deficiencies within 30 days from the date of notification of the deficiency, HHSC will notify TDMHMR to terminate the rehabilitative services provider agreement with the rehabilitative services provider.

(d) [~~(e)~~] Reimbursement determination. HHSC determines reimbursement in the following manner:

(1) Inclusion of certain reported expenses. Rehabilitative services providers must ensure that all requested costs are included in the cost report.

(2) Data collection. HHSC collects several different kinds of data. These include the number of units of service [~~rehabilitative services~~] that individuals receive and cost data, including [~~the number of direct care service minutes by staff. The cost data will include~~] direct costs, programmatic indirect costs, and general and administrative overhead costs. These costs include salaries, benefits, and other costs. Other costs include nonsalary related costs such as building and equipment maintenance, repair, depreciation, amortization, and insurance expenses; employee travel and training expenses; utilities; and material and supply expenses.

[(A) Server time is reported by the type of service delivered.]

[(B) Server time can be given by professionals and paraprofessionals. These include, but are not necessarily limited to physicians, psychologists, nurses, social workers, counselors, therapists, therapy associates, and paraprofessionals. HHSC collects the wages, salaries, benefits, and other costs to determine reimbursement.]

[(C) Programmatic indirect costs include salaries, benefits, and other costs of the rehabilitative service programs that are indirectly related to the delivery of rehabilitative services to individuals. General administrative overhead includes the salaries, benefits, and other costs of operations of the rehabilitative services provider that, while not directly part of the rehabilitative program, constitute costs which support the operations of the rehabilitative program.]

(3) Interim rate methodology. HHSC projects and adjusts reported costs from the historical reporting period to determine the interim rate for the prospective reimbursement period. Cost projections adjust the allowed historical costs based on significant changes in cost-related conditions anticipated to occur between the historical cost period and the prospective reimbursement period. Changes in cost-related conditions include, but are not limited to, inflation or deflation in wage or price, changes in program utilization and occupancy, modification of federal or state regulations and statutes, and implementation of federal or state court orders and settlement agreements. Costs are adjusted for the prospective reimbursement period by a general cost inflation index as specified in §355.704 of this tile (relating to Determination of Inflation Indices). [Reimbursement methodology. HHSC determines the reimbursement rate using the following method:]

[(A) Projected and adjusted costs. Reported costs are projected and adjusted prior to calculations for determining reimbursement. HHSC uses reasonable methods for projecting costs from the historical reporting period to the prospective reimbursement period. The historical reporting period is the time period covered by the cost report. Cost projections adjust the allowed historical costs for significant changes in cost related conditions anticipated to occur between the historical cost period and the prospective reimbursement period. Significant conditions include, but are not necessarily limited to, wage and price inflation or deflation, changes in program utilization and occupancy, modification of federal or state regulations and statutes, and implementation of federal or state court orders and settlement agreements. HHSC determines reasonable and appropriate economic adjusters to calculate the projected expenses. The PCE, which is based on data from the U.S. Department of Commerce, is the most general measure of inflation and is applied to most salaries, materials, supplies, and services when other specific inflators are not appropriate. The three payroll tax inflators, FICA (Social Security), FUTA/SUTA (federal and state unemployment) and WCI (Workers' Compensation) are based on data obtained from the Statistical Abstract of the United States, the Texas Employment Commission, and the Texas Board of Insurance, respectively. For non-state operated rehabilitative services providers, wage inflation factors are based on wage and hour survey information submitted on cost reports or special surveys or the PCE, when wage and hour survey information is unavailable. For state-operated rehabilitative services providers, the inflation factor is based on wage increases approved by the Texas Legislature. HHSC adjusts reimbursement if new legislation, regulations, or economic factors affect costs, as specified in §355.706 of this title (relating to Adjusting Reimbursement).]

(A) [(B)] Reimbursement determination. For each service type, [type of rehabilitative service] each rehabilitative services provider's projected cost per unit of service is calculated. The mean rehabilitative services provider cost per unit of service is calculated, and the statistical outliers (those rehabilitative services providers whose unit costs exceed plus or minus (+/-) two standard deviations of the mean rehabilitative services provider cost) are removed. After removal of the statistical outliers, the mean cost per unit of service is calculated. This mean cost per unit of service becomes the recommended reimbursement per unit of service.

(B) [(C)] Reimbursement setting authority. HHSC establishes the reimbursement rate. HHSC sets reimbursements that, in its opinion, are within budgetary constraints, adequate to reimburse the cost of operations for an economic and efficient rehabilitative services provider, and justifiable given current economic conditions.

(C) [(D)] Reviews of cost report disallowances. A rehabilitative services provider may request notification of the exclusions and adjustments to reported expenses made during either desk reviews or on-site audits, according to §355.705 of this title (relating to Notification). Rehabilitative services providers may request an informal review and, if necessary, an administrative hearing to dispute the action taken by HHSC under §355.707 of this title (relating to Reviews and Administrative Hearings).

(D) Allowable and unallowable costs. Cost reports may only include costs that meet the requirements as specified in §355.708 of this title (relating to Allowable and Unallowable Costs).

[(E) Requirements for allowable costs. Allowable costs must be:]

[(i) necessary and reasonable for the proper and efficient administration of rehabilitative services for which TDMHMR has contracted;]

[(ii) authorized or not prohibited under state or local laws or regulations;]

[(iii) consistent with any limitations or exclusions described in this section, federal or state laws, or other governing limitations as to types or amounts of cost items;]

[(iv) consistent with policies, regulations, and procedures that apply to both rehabilitative services and other activities of the organization of which the rehabilitative services provider is a part;]

[(v) treated consistently using generally accepted accounting principles appropriate to the circumstances;]

[(vi) not allowable to or included as a cost of any other program in either the current or a prior period; and]

[(vii) net of all applicable credits.]

[(F) Reasonableness. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, HHSC considers the following:]

[(i) whether the cost is of a type generally recognized as ordinary and necessary for the provision of rehabilitative services or the performance under the provider agreement;]

[(ii) the restraints or requirements imposed by generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications; and]

[(iii) the action that a prudent person would take in the circumstances, considering his/her responsibilities to the public, the government, employees, clients, shareholders, and/or members, and the fulfillment of the purpose for which the business was organized.]

[(G) Allowable costs. Costs associated with rehabilitative services for persons with mental illness for which a claim is submitted must be found to be allowable as described in federal Circular OMB-A87, with the following exceptions:]

[(i) Equipment is defined as having a useful life of more than one year and a value of $2500 or more.]

[(ii) Legal expenses to prosecute claims against the state of Texas or the United States are unallowable.]

(4) Settlement process. At the end of each reimbursement period, HHSC will compare the amount reimbursed at the interim rate for each service type and the rehabilitative services provider's costs for each service type, as submitted on its cost report in accordance with subsection (c) of this section.

(A) If a rehabilitative service provider's costs are less than 95% of the amount reimbursed at the interim rate, HHSC will demand that payment be made to TDMHMR by the rehabilitative services provider of the difference between its allowable costs and 95% of the amount reimbursed at the interim rate for each service type.

(i) A rehabilitative services provider may request an administrative hearing in accordance with 25 TAC Chapter 409, Subchapter B (relating to Adverse Actions) to contest the demand for payment.

(ii) If the rehabilitative services provider does not request an administrative hearing to contest the demand for payment, the provider must pay TDMHMR the amount due within 30 days after the demand for payment was received by the provider. If TDMHMR has not received payment of the amount due within this time period, TDMHMR may impose a vendor hold on or recoup Medicaid payments due to the rehabilitative services provider.

(B) If a rehabilitative services provider's costs exceed the amount reimbursed at the interim rate, TDMHMR will reimburse the rehabilitative services provider the difference between its allowable costs and the reimbursement at the interim rate up to 125% of the interim rate for each service type. Prior to reimbursement, TDMHMR will notify the rehabilitative services provider of the amount owed to the provider.

[(f) Definition. "Unit of service" or "unit of rehabilitative service" means:]

[(1) for community support services--a direct contact lasting up to 30 minutes including the time spent by the staff person traveling to and from the location at which the direct contact occurs;]

[(2) for day programs--one hour; and]

[(3) for rehabilitative treatment plan oversight--one direct contact.]

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

Filed with the Office of the Secretary of State, on April 23, 2001.

TRD-200102330
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 424-6576

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 4. COOPERATIVE MARKETING ASSOCIATIONS

4 TAC §4.5

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

The Texas Department of Agriculture (the department) proposes the repeal of §4.5, concerning an expiration date for Chapter 4, relating to Cooperative Marketing Associations. The repeal of §4.5 is proposed because the establishment of an expiration date for Chapter 4 is no longer necessary due to the enactment of legislation establishing a timeframe for review of agency rules. The repeal of §4.5 eliminates the expiration date for Chapter 4.

Margaret Alvarez, Coordinator for Cooperative Marketing Associations, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Alvarez also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be reduced state regulations. There will be no effect on microbusinesses, small or large businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

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

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

The code affected by this proposal is the Texas Agriculture Code, Chapter 52.

§4.5. Expiration Provision.

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

Filed with the Office of the Secretary of State, on May 7, 2001.

TRD-200102542
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 463-4075

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CHAPTER 6. SEED ARBITRATION

4 TAC §6.5

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

The Texas Department of Agriculture (the department) proposes the repeal of §6.5, concerning an expiration date for Chapter 6, relating to Seed Arbitration. The repeal of §6.5 is proposed because the establishment of an expiration date for Chapter 6 is no longer necessary due to the enactment of legislation establishing a timeframe for review of agency rules. The repeal of §6.5 will eliminate the expiration date for Chapter 6.

Kelly Book, Seed Quality Branch Chief, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

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

Comments on the proposal may be submitted to Kelly Book, Seed Quality Branch Chief, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

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

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 64.

§6.5. Expiration Provision.

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

Filed with the Office of the Secretary of State, on May 7, 2001.

TRD-200102543
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 463-4075

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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 R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.476

The Public Utility Commission of Texas (commission) proposes new §25.476, relating to Labeling of Electricity with Respect to Fuel Mix and Environmental Impact. The proposed new rule supplements §25.475, relating to Information Disclosures to Residential and Small Commercial Customers, and the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.101, Customer Safeguards. Project Number 22816 is assigned to this proceeding.

This proposal revises a previously published version of proposed §25.476, changing references to "power generating companies" to "owners of generation assets," adds definitions for "generator scorecard" and "owner of generation assets" and deletes the definition "PGC scorecard." Five additional questions are also asked in this preamble. The previous version of the proposed rule, which has been withdrawn, was published in the *Texas Register* on February 2, 2001 (26 TexReg 1051). All previously filed comments on the proposed rule as published February 2, 2001, are considered part of the record for §25.476 as republished and do not need to be re-submitted.

This rulemaking was initiated on July 21, 2000, in the context of Project Number 22255, *Rulemaking Proceeding for Customer Protection Rules for Electric Restructuring Implementing SB 7 and SB 86.* After conducting several fact-gathering workshops, commission staff prepared a strawman rule for discussion at a workshop that was held on November 14, 2000, at the commission's offices in Austin, Texas. Following the workshop, interested parties submitted informal written comments. On March 26, 2001, staff conducted a workshop on the rule in conjunction with a pre-hearing conference in P.U.C. Docket Number 23802, *Proceeding to Consider Section 14 of the ERCOT Protocols (Severed from Docket Number 22320).*

When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

In addition to comments on specific subsections of the proposed rule, the commission requests that parties specifically address the following issues:

1. Should owners of renewable energy generation assets have the option to split a plant's output between a certificate of generation and a renewable energy credit (REC) offset? If so, what procedure would ensure that the output is not double- counted?

2. How should the optional certificates program accommodate generation from federally owned hydroelectric facilities whose output must be sold to municipally owned utilities and electric co-operatives?

3. To simplify and streamline the reporting and calculation process, the commission has developed forms, spreadsheets, and templates, residing on the agency webpage, for data reporting from power generation companies (PGCs) and calculation of the generator scorecard. Prototype scorecards with supporting data can be found at http://www.puc.state.tx.us/rules/rulemake/22816/22816.cfm. The commission has also developed forms, spreadsheets and templates for retail electric provider (REP) calculation of fuel

mix and emissions impacts, using the generator scorecards. These will be used for web-based reporting and automated data compilation, to minimize compliance effort and cost for the parties and the commission. Parties are welcome to comment on these forms and spreadsheets, which will be adopted after comment as part of final rule adoption.

4. Should the PGC generation scorecards and the REP fuel mix label be updated only once per year, or would there be value to the market to develop updates at more frequent intervals once the competitive retail market has stabilized? For instance, would it be appropriate to use the same set of scorecards and fuel mixes for all of 2002, but change the reporting and update schedule to quarterly editions beginning in 2003? Given the availability of standardized, web-based, automated reporting and calculation of these informational tools, what would be the costs and benefits of more frequent updates, and what would be the appropriate timing and preparation schedule?

5. As new generators enter the market and existing generators' portfolios change, what updating process should be developed to reflect these changes in the generator scorecards? Is it necessary to develop some verification process as well, to assure that no erroneous or fraudulent reporting occurs?

David Hurlbut, Senior Economic Analyst, Policy Development Division, has determined that for each year of the first five-year period the proposed section is in effect the fiscal implications for state government as a result of enforcing or administering the section will be minimal, as new costs will be offset by transaction fees assessed on optional activities created by this proposed section. Mr. Hurlbut has determined that there will be no fiscal implications for local government as a result of enforcing or administering the section, except in the case of a municipally owned utility that has opted into competition, is operating outside its certificated service area, and chooses to use some of the optional provisions created by this proposed section.

Mr. Hurlbut 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 an orderly, fair, and efficient market for retail electric services that promotes competition and ensures that customers have adequate information to make informed choices. There are no anticipated adverse effects on small businesses or micro-businesses as a result of enforcing this section. There are no anticipated additional economic costs to persons who comply with the minimum requirements of this section as proposed; optional provisions of this section simultaneously introduce potential costs and potential benefits that are left to the market to resolve.

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

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on June 21, 2001, at 9:30 a.m.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 22816.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (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 §39.101 which grants the commission authority to establish various specific protections for retail customers, including entitling customers to have information concerning the environmental impact of certain production facilities, and information sufficient to make an informed choice of electric service provider; §39.9044 which grants the commission authority to establish rules allowing and encouraging competitive retailers to market electricity generated using natural gas produced in this state as environmentally beneficial; and PURA Chapter 17, Subchapter A, which authorizes the commission to adopt rules to protect retail customers and requires the commission to promote public awareness of changes in the electric utility market.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, 39.9044, and Chapter 17, Subchapter A.

§25.476. Labeling of Electricity with Respect to Fuel Mix and Environmental Impact.

(a) Purpose. The purpose of this section is to establish the procedures by which competitive retailers calculate and disclose information on the Electricity Facts label pursuant to §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers).

(b) Application. This section applies to all competitive retailers and affiliated retail electric providers (affiliated REPs) as defined in §25.471(d) of this title (relating to General Provisions of Customer Protection Rules). Additionally, some of the reporting requirements established in this section apply to all owners of generation assets as defined in subsection (c) of this section.

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

(1) Authenticated generation - Generated electricity with quantity, fuel mix, and environmental attributes accounted for by a retired certificate of generation, retired renewable energy credit (REC), or supply contract between a competitive retailer or affiliated REP and an owner of generation assets.

(2) Certificate of generation - A tradable instrument issued by an owner of generation assets designating the megawatt-hours (MWh), fuel and environmental attributes of a specific quantity of production from a specific electricity generating facility.

(3) Default scorecard - The estimated fuel mix and environmental impact of all electricity in Texas that is not authenticated as defined in paragraph (1) of this subsection.

(4) Electricity Facts label - A standardized format, as described in §25.475(e) of this title, for disclosure information and contract terms made available to customers to help them choose a provider and an electricity product.

(5) Electricity product - A product offered by a competitive retailer or affiliated REP to a customer for the provision of retail electric service under specific terms and conditions, and marketed under a specific Electricity Facts label.

(6) Environmental impact - The information that is to be reported on the Electricity Facts label under the heading "emissions and waste per kWh generated," comprising indicators for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear reactor fuel. For the purposes of this section, environmental impact refers specifically to emissions and waste from generating facilities located in Texas, except as provided in subsection (g)(3) of this section.

(7) Fuel mix - The information that is to be reported on the Electricity Facts label under the heading "sources of power generation." The fuel mix shall be the percentage of total MWh obtained from each of the following fuel categories: coal and lignite, natural gas, nuclear, renewable energy, and other known sources. Renewable energy shall include power defined as renewable by the Public Utility Regulatory Act (PURA) §39.904(d).

(8) Generator scorecard - The aggregated fuel mix and environmental impact of all an owner of generation asset's generating facilities located in Texas, adjusted by subtracting any generation for which a REC has been issued or a certificate of generation has been retired.

(9) New product - An electricity product during the first year it is marketed to customers.

(10) Other generation sources - A competitive retailer's or affiliated REP's supply of generated electricity that is not accounted for by a direct supply contract with an owner of generation assets.

(11) Owner of generation assets - A power generation company, river authority, municipally owned utility, electric cooperative, or any other entity that owns or controls generating facilities in the state of Texas.

(12) Renewable energy credit (REC) - A tradable instrument representing the generation attributes of one MWh of electricity from renewable energy sources, as authorized by PURA §39.904 and implemented under §25.173 of this title (relating to the Goal for Renewable Energy).

(13) Renewable energy credit offset (REC offset) - A REC offset represents one MWh of renewable energy that may be used in place of a REC, according to the provisions of §25.173 of this title.

(d) Marketing standards for "green" and "renewable" electricity products.

(1) Any marketing statement made by a competitive retailer or affiliated REP describing an electricity product as "green" must prominently include the product's combined natural gas and renewable fuel mix percentage consistent with its Electricity Facts label. A product may not be marketed as "green" without reference to a fuel mix percentage.

(2) Any marketing statement made by a competitive retailer or affiliated REP describing an electricity product as "renewable" must prominently include the product's renewable fuel mix percentage as shown on its Electricity Facts label and may not include the product's natural gas fuel mix percentage. A product may be marketed as "renewable" without reference to a fuel mix percentage only if the product's authenticated fuel mix is 100% renewable.

(e) Compilation of scorecard data.

(1) The commission will create and maintain a database of generator scorecards reflecting each owner of generation assets' company-wide fuel mix and environmental impact data based on generating facilities located in Texas. These scorecards shall be used by competitive retailers and affiliated REPs in determining the fuel and environmental attributes of electricity sold to retail customers.

(2) Generator scorecards will be published on the commission's internet web site beginning July 1, 2001, and shall state:

(A) MWh obtained from each fuel source (coal and lignite, natural gas, nuclear, renewable energy, and other sources), excluding generation for which a REC has been issued, and the corresponding percentages of total MWh;

(B) tons of carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear fuel produced, excluding emissions from generation for which a REC has been issued, and the corresponding emission rates in tons per MWh; and

(C) sources from which data were obtained.

(3) Not later than March 1 of each year, the commission will update all generator scorecards to reflect:

(A) changes in generation facilities' emission rates and fuel use;

(B) new plants in operation and the retirement of plants previously in operation; and

(C) certificates of generation issued for the previous calendar year by the owner of generation assets that a competitive retailer or affiliated REP intends to retire to authenticate fuel mix and environmental impact disclosures.

(4) Not later than March 1 of each year, the commission will calculate a default scorecard to account for all electric generation in the state that is not authenticated as defined in subsection (c)(1) of this section.

(A) The default fuel mix shall be the percentage of total MWh of generation not authenticated that has been obtained from each fuel type.

(B) Default emission rates for each environmental criterion shall be calculated by dividing total tons of emissions or waste by total MWh, using data only for generation not authenticated.

(C) The default scorecard shall be published on the commission's internet web site beginning July 1, 2001.

(f) Certificates of generation. At its option, an owner of generation assets may issue and sell certificates of generation representing the fuel mix and environmental attributes of a specific generating facility that it operates in Texas. Certificates of generation may be traded by competitive retailers, affiliated REPs, power marketers, or any other party, and may be retired by competitive retailers and affiliated REPs to authenticate the fuel mix and environmental attributes of electricity sold to retail customers.

(1) The commission shall appoint a program administrator who shall:

(A) establish a registry of certificates issued by owners of generation assets;

(B) maintain public information on its website that provides trading program information to interested buyers and sellers of certificates;

(C) create an exchange procedure where persons may purchase and sell certificates anonymously;

(D) perform audits of generators participating in the certificates program to verify the accuracy of production data reported on registered certificates;

(E) inform participating owners of generation assets of the certificates that have been submitted for retirement by competitive retailers and affiliated REPs;

(F) collect user fees sufficient for the program to be self-sustaining; and

(G) submit an annual report to the commission describing the number and characteristics of certificates issued by owners of generation assets, number and characteristics of certificates retired by competitive retailers, and other pertinent information regarding the operation of the certificates program.

(2) A certificate shall be based on electricity generated prior to the certificate issue date. A certificate may cover any length of time within a single calendar year. Certificates for electricity generated during a given calendar year must be issued before February 8 of the following year.

(3) A certificate shall account for all of the facility's electricity output for the period covered by the certificate.

(4) No quantity of generation may be included in more than one certificate.

(5) Certificates shall not represent electricity output associated with a REC or a REC offset.

(6) Certificates may be sold as independent instruments or in conjunction with supply contracts between the issuing owner of generation assets and a competitive retailer. If an owner of generation assets sells certificates to a retailer in conjunction with a supply contract, and the retailer chooses to resell the certificates to another party while retaining the electricity, the retailer shall use the owner of generation assets' company scorecard to describe the attributes of the retained electricity.

(7) Each certificate must include the following information specific to the generation for which it has been issued:

(A) name of the issuing owner;

(B) unique identification for the generating facility, including meter identification number;

(C) date of issue;

(D) time and date of the beginning of the period covered by the certificate;

(E) time and date of the end of the period covered by the certificate;

(F) MWh metered during the period covered by the certificate;

(G) types of fuel used during the period covered by the certificate;

(H) the amount (in tons) of carbon dioxide, nitrogen oxides, sulfur dioxide, particulates, and spent nuclear fuel produced by the facility as a result of generating the MWh represented by the certificate; and

(I) an affidavit that the information contained in the certificate is true and accurate.

(8) An owner of generation assets shall register each of its certificates of generation with the program administrator. Certificates not registered by February 8 following the reporting year shall be invalid.

(9) For the purposes of calculating its fuel and environmental impact disclosures for its Electricity Facts labels, a competitive retailer or affiliated REP may purchase and retire certificates of generation to account for other generation sources as defined in subsection (c)(10) of this section. If all of a competitive retailer's or affiliated REP's other generation sources are represented by certificates, the retailer may retire additional certificates to represent power obtained under a supply contract with any owner of generation assets that otherwise would have been represented by the owner's scorecard. All certificates that a competitive retailer or affiliated REP intends to use to authenticate its disclosures must be included in the supply report required under subsection (g)(1) of this section.

(10) Not later than February 15 of each year, the program administrator shall inform participating owners of generation assets of the certificates that competitive retailers and affiliated REPs intend to retire. Not later than March 1 of each year, each owner of generation assets that has issued certificates shall provide the commission with an adjusted generator scorecard. The adjusted scorecard shall be based on the same data used by the commission in determining the owner of generation assets' unadjusted scorecard and shall exclude:

(A) all certificated generation that a competitive retailer or affiliated REP intends to retire; and

(B) generation represented by a REC or a REC offset.

(11) A certificate is not valid if the issuing owner of generation assets has failed to register the certificate or has failed to provide the commission with an adjusted scorecard as stipulated in paragraphs (8) and (10) of this subsection.

(g) Calculating fuel mix and environmental impact disclosures.

(1) Not later than February 8 of each year, each competitive retailer and affiliated REP shall report to the commission:

(A) all owners of generation assets and other entities from which the competitive retailer or affiliated REP purchased electricity for delivery to customers during the previous calendar year and the MWh obtained from each supplier, with sources that together supplied less than 5.0% of the competitive retailer's electricity combined and treated as other generation sources;

(B) MWh sold under each electricity product offered by the competitive retailer or affiliated REP during the previous calendar year; and

(C) all certificates of generation that the competitive retailer or affiliated REP intends to retire to authenticate fuel mix and environmental impact disclosures for the previous calendar year.

(2) Not later than April 1 of each year, each competitive retailer and affiliated REP shall calculate its fuel mix and environmental impact for the previous calendar year, concurrent with settlement period established in §25.173(l) of this title. Calculations shall include a disclosure that aggregates all electricity products offered by the competitive retailer, and specific disclosures for each electricity product. Disclosures provided on an Electricity Facts label shall describe a specific electricity product sold to customers during the calendar year preceding the settlement period, except as provided in paragraph (9) of this subsection.

(3) For power purchased from sources outside of Texas, a supply contract between a competitive retailer or affiliated REP and the owner of a generating facility may be used to authenticate fuel mix and environmental impact claims.

(A) The contract must identify a specific generating facility from which the competitive retailer or affiliated REP is to obtain electricity.

(B) The competitive retailer or affiliated REP shall include fuel mix and environmental impact information for the specified generating facility in its report to the commission pursuant to paragraph (1) of this subsection. Data shall come from the same sources used by the commission as reported pursuant to subsection (e)(2)(C) of this section. If the generating facility is not included in any database used by the commission, the retailer and the generating facility owner may provide other comparable public data that have been reported to a federal or state agency for the specified facility.

(4) For the purposes of disclosures on the Electricity Facts label, the retirement of RECs shall be the only method of authenticating generation for which a REC has been issued in accordance with §25.173 of this title. The retirement of a REC shall be equivalent to one megawatt-hour of generation from renewable resources. The use of RECs to authenticate the use of renewable fuels on the Electricity Facts label must be consistent with REC account information maintained by the renewable energy credits trading program administrator. A REC offset may be used to authenticate the renewable attributes of its associated supply contract.

(5) A competitive retailer's or affiliated REP's company fuel mix shall be the MWh-weighted average of the fuel mixes represented by its generator scorecards, retired certificates of generation, out-of-state supply contracts, retired RECs, and the default scorecard. MWh from generation sources not authenticated in accordance with this section shall be represented by the fuel mix of the default scorecard.

(6) A competitive retailer's or affiliated REP's company environmental impact shall be the MWh-weighted average of the emission rates represented by its generator scorecards, retired certificates of generation, out-of-state supply contracts, retired RECs, and the default scorecard. Emissions of MWh from generation sources not authenticated in accordance with this section shall be represented by the default scorecard. The weighted average of each category of environmental impact shall then be indexed by dividing it by the corresponding state average emission rate and multiplying the result by 100.

(7) If a competitive retailer or affiliated REP offers multiple electricity products that differ with regard to the fuel mix and environmental impact disclosures presented on the Electricity Facts labels:

(A) the retailer shall apportion its company fuel mix and emission rates consistent with the product-specific MWh sales reported under paragraph (1)(B) of this subsection; and

(B) each label shall reflect the number of RECs that the competitive retailer or affiliated REP has retired to satisfy the requirements of §25.173(h) of this title, relating to the allocation of REC purchase requirement to competitive retailers; additional RECs that are retired voluntarily may be applied to any electricity product offered by the company, except as limited by paragraph (8) of this subsection.

(8) An affiliated REP shall use only one fuel mix and environmental impact disclosure for all price-to-beat products sold to residential and small commercial customers of its affiliated transmission and distribution utility.

(9) A competitive retailer or affiliated REP may anticipate the fuel mix and environmental impact of a new product and adjust the disclosures for its existing products to account for the new product's projected sales.

(A) On the fuel mix disclosure of a new product's Electricity Facts label, the heading "Sources of power generation" shall be replaced with "Projected sources of power generation."

(B) On the environmental impact disclosure of a new product's Electricity Facts label, the heading "Emissions and waste per kWh generated" shall be replaced with "Projected emissions and waste per kWh generated."

(C) The competitive retailer or affiliated REP shall exercise due diligence in its acquisition of purchased power throughout the year so that the fuel mix and environmental impact authenticated at the end of the year is at least as favorable as what the retailer projected.

(D) Nothing in this subsection shall be construed as protecting a competitive retailer or affiliated REP against prosecution under deceptive trade practices statutes.

(E) A projected fuel mix may be used only for new products.

(h) Special provisions for the first year of competition. Each competitive retailer and affiliated REP during the first year of competition, beginning January 1, 2002, and ending December 31, 2002, shall estimate the fuel mix and environmental impact of its electricity products offered as follows:

(1) affiliated REPs shall estimate their fuel mixes and environmental impacts by using the company fuel mixes and emission rates of their affiliated PGCs; and

(2) all other competitive retailers shall project the fuel mix and environmental impacts of products they offer during 2002, and shall exercise due diligence in their acquisition of purchased power throughout the year so that the fuel mix verified at the end of the year is at least as favorable as what was projected.

(i) Compliance and enforcement.

(1) If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, is in violation of this section, the commission shall order the REP to take corrective action as necessary, and the REP may be subject to administrative penalties pursuant to PURA §15.023 and 15.024.If the commission finds that an electric cooperative or a municipally owned utility is in violation, it shall inform the cooperative's board of directors and general manager, or the municipal utility's general manager and city council, and may issue an advisory to local news media.

(2) If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, repeatedly violates 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 REP, thereby denying the REP the right to provide service in this state.

(3) 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.

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

Filed with the Office of the Secretary of State, on May 1, 2001.

TRD-200102470

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 936-7308

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PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS
SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS
DIVISION 2. PROGRAMS FOR HORSES

16 TAC §303.94

The Texas Racing Commission proposes an amendment to §303.94, relating to Arabian horse rules. The amendment would adopt by reference the latest rules of the Texas Arabian Breeders Association ("TABA"), the official breed registry for Arabian horses in accordance with the Racing Act. In an effort to encourage and promote Arabian Accredited Texas-bred racing, the TABA has changed it rules to clarify the standards for Texas-bred accreditation. The rules establish a program for accredited grandfather runners. Additionally, the TABA amended rules establish a fee schedule for the new accredited horses.

Judith L. Kennison, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the rule is in effect there are no fiscal implications for state or local government as a result of enforcing the proposals.

Ms. Kennison has also determined that for each of the first five years the rule is in effect the public benefit anticipated will be increased participation by Texas-bred breeders. There will be no fiscal implications for small or micro-businesses. There is an anticipated economic cost to an individual desiring to accredit an Texas-bred Arabian horse pursuant to the revised rules. The fee varies with the age of the horse, beginning at $125 for weanlings and ending at $500 for three year olds.. The proposal has no effect on the state's agricultural, horse training, greyhound breeding, or greyhound training industries. The proposal will affect the breeding industry for Arabian horses.

Comments on the proposal may be submitted on or before June 18, 2001, to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse or greyhound racing; §6.08, which authorizes the Commission to adopt rules relating to the accounting, audit, and distribution of all amounts set aside for the Texas-bred program.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.94. Arabian Horse Rules

The Commission [~~commission~~] adopts by reference the rules of the Texas Arabian Breeders Association dated March 31, 2001 [~~May 5, 1997~~], regarding the administration of the Texas Bred Incentive Program for Arabian horses. Copies of these rules are available at the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711, or at the Commission [~~commission~~] office at 8505 Cross Park Drive, #110, Austin, Texas 78754-4594.

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

Filed with the Office of the Secretary of State, on May 7, 2001.

TRD-200102557
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 833-6699

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CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING
SUBCHAPTER E. TRAINING FACILITIES

16 TAC §313.507

The Texas Racing Commission proposes an amendment to §313.507 relating to employees at training facilities. The amendment would reflect the current licensing fee of $15.00 from the previously charged $20.00 for employees of training facilities. This reduction has been in effect for over a year and was listed in the fee schedule, however it was inadvertently omitted from this rule.

Judith L. Kennison, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the rule is in effect there are no fiscal implications for local government and negligible fiscal implications for state government as a result of enforcing the proposal. Although the fee amount has been reduced, the number of licensees affected by the proposal negates any significant impact.

Ms. Kennison has also determined that for each of the first five years the rule is in effect the anticipated public benefit is a reduction of governmental fees. There will be slight fiscal implications for small or micro-businesses involved in horse and greyhound training businesses. Those businesses that expend funds for the licenses of its employees will reap a slight reduction in its operational costs. There will be no anticipated economic cost to an individual required to comply with the rule as proposed, in fact, a slight benefit is anticipated. There will be no effect on the state's agricultural, horse breeding, horse training, greyhound breeding industries, or greyhound training industries.

Comments on the proposal may be submitted on or before June 18, 2001, to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to regulate every race meeting in this state involving wagering on the result of greyhound or horse racing; §7.02, which authorizes the Commission to adopt categories of occupational licenses; and §7.05, which authorizes the Commission to set the amount of occupational fees by rule.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§313.507. Employees of Training Facilities.

(a) The general manager and chief executive officer of a licensed training facility must obtain a training facility employee license from the Commission. The license fee for a training facility employee license is $15 [~~$20~~]. A training facility employee license may be denied, suspended, or revoked for any of the grounds listed in the Act, §7.04.

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

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

Filed with the Office of the Secretary of State, on May 7, 2001.

TRD-200102558
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 833-6699

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CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING
SUBCHAPTER B. TREATMENT OF HORSES

16 TAC §319.111

The Texas Racing Commission proposes an amendment to §319.111, relating to bleeders and the Furosemide (Lasix) program. The proposed amendment clarifies an ambiguity in the definition of a "bleeder". The amendment makes plain that a diagnosis of exercise induced pulmonary hemorrhage (EIPH) made in another pari-mutuel racing jurisdiction will also be considered a valid diagnosis in Texas.

Judith L. Kennison, General Counsel for the Texas Racing Commission, determined that for the first five-year period the rule is in effect there are no fiscal implications for state or local government as a result of enforcing the proposals.

Ms. Kennison has also determined that the anticipated public benefit for each of the first five years the rule is in effect will be increased accuracy in determining eligibility for the Lasix program and that pari-mutuel horse racing will be safer and more humane for the horses. There will be no fiscal implications for small or micro-businesses. There is may be some economic cost to an individual required to comply with the rule as proposed. Because a horse diagnosed with EIPH is required to forego racing for a period of time for recuperative purposes, the owner of a horse that bleeds will lose the opportunity to earn purse money during that recuperative period. The total amount of potential earnings lost cannot be determined, however, due to the variables of purse structure, the competitive quality of the horses, and the number of horses suffering from EIPH.

The proposal has no effect on the state's agricultural, horse breeding, greyhound breeding and training industries. The proposal has some effect on the horse training industry, in that it recognizes diagnoses of EIPH in other jurisdictions, thereby preventing a horse from racing in Texas during the recuperative period following subsequent bleeding episodes.

Comments on the proposal may be submitted on or before June 18, 2001 to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to regulate every race meeting in this state involving wagering on the result of greyhound or horse racing;§6.06 which authorizes the Commission to adopt rules relating to the operation of racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§319.111. Bleeders and Furosemide (Lasix) Program.

(a) Diagnosis of EIPH. A bleeder is a horse that experiences Exercise Induced Pulmonary Hemorrhage (EIPH). Except as otherwise provided by this subsection, the [~~The~~] medical diagnosis of EIPH may be made only by a commission veterinarian, or a practicing veterinarian holding a current license from the Commission [~~commission~~]. A certification as a bleeder by any pari-mutuel racing jurisdiction will also constitute a medical diagnosis for purposes of this section. A veterinarian who diagnoses an EIPH event in a horse participating in pari-mutuel racing in this state shall report the event to the commission veterinarian in a format prescribed by the Commission [~~commission~~]. On receipt of the first report of a diagnosed EIPH event for a horse, the commission veterinarian shall certify the horse as a bleeder.

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

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

Filed with the Office of the Secretary of State, on May 7, 2001.

TRD-200102560
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 833-6699

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CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER D. SIMULCAST WAGERING
DIVISION 3. SIMULCASTING AT HORSE RACETRACKS

16 TAC §321.507

The Texas Racing Commission proposes an amendment to §321.507, concerning priority of signals. The proposed amendment authorizes the Commission, instead of the executive secretary, to approve or disapprove an application by a licensed Class 3 or 4 racetrack for simulcasting. In addition, the amendment deletes the requirement that a licensed Class 3 or 4 racetrack must be in continuing operation for 25 years before it may be permitted to offer simulcasting. This modification will broaden the opportunity for future racetracks to meet the criteria for simulcasting.

Judith L. Kennison, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the rule is in effect there are no fiscal implications for local government as a result of enforcing the proposals. During the first five-year period the rule is in effect, a new simulcasting venue could generate

revenue for the state from simulcasting. The amount of money derived from the simulcasting cannot be determined, however, because of the variables associated with location, simulcast offerings, and attendance.

Ms. Kennison has also determined that for each of the first five years the rule is in effect the public benefit will be increased wagering opportunities. There will be fiscal implications for small or micro-businesses. A new Class 3 or 4 racetrack that begins simulcasting will generate revenue for purses, for the Texas-bred Incentive Programs, and for the track. The amount of money derived from the simulcasting cannot be determined, however, because of the variables associated with location, simulcast offerings, and attendance. There is no anticipated economic cost to an individual required to comply with the amendment as proposed.

The proposal has no effect on the state's agricultural industry. The proposal has some effect on the horse breeding and horse training industries, in that simulcasting at a new Class 3 or 4 racetrack will generate revenue for horse purses and the Texas-bred Incentive Programs. If the track offers greyhound simulcasts, the simulcasting will generate revenue for greyhound purses and the Texas-bred Incentive Programs for greyhounds, thereby affecting the greyhound breeding and greyhound training industries.

Comments on the proposal may be submitted on or before June 18, 2001, to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing and for administering the Texas Racing Act;§3.021, which authorizes the Commission to regulate all aspects of horse or greyhound racing in this state with or without wagering; §6.06, which authorizes the Commission to adopt rules relating to all aspects of pari-mutuel tracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering; and §11.011, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast racing.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§321.507. Priority of Signals.

(a) Class 1 and Class 2 Racetracks. A Class 1 or Class 2 racetrack may offer pari-mutuel wagering on a race simulcast from another jurisdiction, subject to the approval of the executive secretary, provided the Class 1 or Class 2 racetrack also offers all available simulcast races originating in Texas on that day.

(b) Class 3 and Class 4 Racetracks. A Class 3 or Class 4 racetrack may conduct pari-mutuel wagering on a race simulcast from another jurisdiction, subject to the approval of the executive secretary, provided the Class 3 or Class 4 racetrack:

(1) also offers all available simulcast races originating in Texas on that day;

(2) is owned or managed by an entity that has at least three years experience operating a pari-mutuel racetrack in Texas;

(3) demonstrates to the Commission's [~~executive secretary's~~] satisfaction that the simulcasting is necessary to provide sufficient purses to support the Texas live racing industry;

(4) demonstrates to the Commission's [~~executive secretary's~~] satisfaction that the live racing program offered at the racetrack provides significant support to the Texas horse breeding industry; and

(5) demonstrates to the Commission any effect simulcasting may have on each Class 1, Class 2, or greyhound racetrack located within 100 miles of the Class 3 or Class 4 racetrack. [~~has conducted live horse races at its racetrack facility each year for at least 25 years before requesting to conduct pari-mutuel wagering on simulcast races.~~]

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

Filed with the Office of the Secretary of State, on May 7, 2001.

TRD-200102559
Judith L. Kennison
General Counsel
Texas Racing Commission
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.8

The Texas Higher Education Coordinating Board proposes amendments to §1.8 of Board rules, concerning Historically Underutilized Business (HUB) Program. The amendments to the rule will incorporate by reference the rules adopted by the General Services Commission in 1 Texas Administrative Code, §§111.11 - 111.28. The purpose of the amendments to the rule is to comply with the Texas Government Code, Title 10, Subtitle D, Chapter 2161, §21.61.003, which requires state agencies to adopt General Services Commission (GSC) rules governing their HUB program for construction projects and purchases of goods and services paid for with state-appropriated funds. The amendments to the rule conforms to Senate Bill 178, 76th Legislature, which amended Chapter 2161 of the Texas Government Code and directed state agencies to adopt the General Services Commission's rules regarding historically underutilized businesses (HUB) as the agency's own rules.

Gary Prevost, Director of Business Services, has determined that for each year of the first five years these amendments to the rule are in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rules. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Prevost has also determined that for each year of the first five years these proposed amendments to the rules are in effect, the public benefit will be an increased awareness of business opportunities for HUB's and increased opportunities for purchase and contract awards to HUB's. There is no adverse effect on small businesses. There are no anticipated economic costs to persons who are required to comply with these sections as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rule may be submitted to Dr. Don W. Brown, Commissioner of Higher Education,

Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendments to the rule is proposed under the Government Code, §2161.003, which requires the board to adopt the rules promulgated by the General Services Commission under Government Code, §2161.002.

The amendments to the rule affect Texas Government Code, Chapter 2161

§1.8. [~~Contracts with~~] Historically Underutilized Business (HUBs) Program.

In accordance with the Government Code, §2161.003, the Texas Higher Education Coordinating Board (board) adopts by reference the rules of the General Services Commission (GSC) found at Title 1 Texas Administrative Code, §§111.11 - 111.28, concerning the Historically Underutilized Business (HUB) Program. For purposes of implementing the GSC rules at the board, references to state agency or agency shall be considered to be a reference to the board.

~~[(a) A Historically Underutilized Business (HUB) is a business that meets the definition of Historically Underutilized Business as defined in the rules of the General Services Commission.]~~

~~[(b) The Board shall make a good faith effort to utilize HUBs in contracts for construction services, including professional and consulting services, and commodities purchases.]~~

~~[(c) The Board shall make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts awarded by the Board in accordance with the percentage goals established by the General Services Commission.]~~

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

Filed with the Office of the Secretary of State, on April 30, 2001.

TRD-200102460
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Proposed date of adoption: July 20, 2001
For further information, please call: (512) 427-6162

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CHAPTER 5. PROGRAM DEVELOPMENT
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.11

Texas Higher Education Coordinating Board proposes amendments to §5.11 concerning the Common Admission Application. Specifically, this amendment will bring the rules in line with the method of allocating the cost of the electronic common application among the participating institutions as voted on by the advisory committee

Lois Hollis, Acting Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments to the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Ms. Hollis has also determined that for each year of the first five years the amendments to the rules are in effect, the public benefit anticipated as a result of administering this amendment to the rules will be that the participating institutions will be charged according to a method voted on by the advisory committee. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the amendments to the rules as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendment to the rules is proposed under the Texas Education Code, §51.763, which provides that the governing board of a university system shall adopt a common admission application form and allow each applicant to apply electronically.

The amendments affect Texas Education Code, §51.763.

§5.11. Common Admission Application.

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

(e) The Coordinating Board shall enter into a memorandum of understanding with a public institution of higher education to design and implement an electronic common application system for use by the public in applying for admission to Texas general academic teaching institutions and for distribution of the electronic application system to the university(s) designated by the applicant. After the system is implemented, operating costs of the system will be paid for by participating institutions. Each institution will pay a portion of the cost based on the percentage of their enrollment [~~or number of applications received~~] compared to the total statewide public higher education enrollment based on the pervious year's certified enrollment data [~~averaged over the previous five years of certified data~~]. The Coordinating Board will monitor the cost of the system and notify the institutions on an annual basis of their share of the cost. Billings for the services for the coming year will be calculated and sent to the institutions in December and payments must be received by September 1.

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

Filed with the Office of the Secretary of State, on April 30, 2001.

TRD-200102457
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Proposed date of adoption: July 20, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER T. TOBACCO LAWSUIT SETTLEMENT FUNDS

19 TAC §5.421

The Texas Higher Education Coordinating Board proposes amendments to §5.421 concerning the Permanent Fund for Minority Health Research and Education. The Coordinating Board first approved rules for the Permanent Fund for Minority Health Research and Education (Texas Education Code §§63.301 - 63.302) in January 2000. The proposed amendments clarify

legislative intent by providing an additional criterion for the award of grant funds. The Fund was created by the 76th Legislature to provide funding to higher education institutions from receipts of the Texas Tobacco Lawsuit Settlement. The Coordinating Board is directed to use investment returns from the Fund for the purpose of providing grants to institutions of higher education, including Centers for Teacher Education, that conduct research or education programs that address minority health issues or form partnerships with minority organizations, colleges or universities to conduct research and educational programs that address minority health issues.

Marshall A. Hill, Assistant Commissioner for Universities and Health-Related Institutions, has determined that for each year of the first five years the proposed amendments to the rule are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule as proposed.

Dr. Hill also has determined that each of the first five years the proposed amendments to the rule is in effect, the public benefit anticipated as a result of administering the section will be the implementation of new or expanded research and educational programs that address minority health issues. There will be no effect on small business. Additional funds provided to individual institutions may have a positive residual effect on local employment.

Comments on the proposed amendments to the rule may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rule is proposed under Texas Education Code §63.302, which directs the Coordinating Board to adopt rules for the award of grants from investment returns of the Permanent Fund.

The amendments to the rule affect Texas Education Code, §63.302.

§5.421. Minority Health Research and Education Grant Program.

(a) (No change.)

(b) General Information. The program, as it applies to this section:

(1)-(6) (No change.)

(7) General Selection Criteria - Competitive. Designed to award grants that provide the best overall value to the state. Selection criteria shall be based on:

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

(D) Other factors to be considered by the Board, including financial ability to perform program, state and regional needs and priorities, whether the eligible institution has been designated as an Historically Black or Hispanic Serving institution by the U.S. Department of Education, ability to continue program after grant period, and past performance.

(8)-(10) (No change.)

(c)-(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 April 30, 2001.

TRD-200102459
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Proposed date of adoption: July 20, 2001
For further information, please call: (512) 427-6162

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.3

Texas Higher Education Coordinating Board proposes amendments to §21.3 concerning Loan Repayment Deferral and Loan Forgiveness for Emergency Tuition Loans made under the Texas Education Code, §56.051. Specifically, these amendments will clarify that the loans are for both tuition and fees and that institutions are required to offer deferrals to students who would otherwise be deprived of an education due to a lack of financial ability. In addition, the amendments will clarify the dates when repayment must begin if a deferral is granted and clarify that institutions are required to forgive emergency loans to individuals who meet the forgiveness criteria outlined in Board rules.

Lois Hollis, Acting Assistant Commissioner for Student Services has determined that for each year of the first five years the amendments to the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Ms. Hollis has also determined that for each year of the first five years the amendments to the rules are in effect, the public benefit anticipated as a result of administering these amendments to the rules will be an increased number of students given additional time to repay their loans or to have their loans forgiven (in case of severe hardship). This additional time can relieve some of the financial pressure on students and enable them to more successfully concentrate on their studies. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the amendments to the rules as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under the Texas Education Code, §56.051, which provides the Coordinating Board with the authority to adopt rules under which each institution of higher education may establish an emergency loan program under which students are loaned money to pay tuition and fees.

The amendments affect Texas Education Code, §56.051.

§21.3. Loan Repayment Deferral and Loan Forgiveness for Emergency Tuition and Fee Loans Made Under Texas Education Code, §56.051.

(a) An institution shall [~~may~~] defer the repayment of emergency tuition and fee loans [~~made under the provisions of the Texas Education Code, §56.~~ 051], in accordance with guidelines adopted by the governing board of the institution. The deferred repayment, however, must begin on the earlier of the following dates: the first day of the ninth month after the last month in which the borrower was enrolled in a public institution of higher education, or the fifth anniversary of the date on which the loan was executed. An institution may extend the

time for repayment of loans for students who enroll in graduate or professional degree programs for up to three years, but not longer than one year beyond the time when the student fails to be enrolled in the institution on at least a half-time basis.

(b) An institution shall [~~may~~] forgive an emergency loan [~~made under provisions of the Texas Education Code, §56. 051~~] to an individual who has been certified by a physician as being physically or mentally incapable of employment, resulting in a financial hardship that [~~which~~] would make repayment infeasible [~~feasible~~]. The physician's certification would need to indicate that the individual's extreme financial hardship condition is expected to continue and would likely make repayment infeasible for the succeeding five years.

(c) An institution shall maintain documentation [~~Documentation~~] justifying the deferral of repayments or the forgiveness [~~forgiving~~] of emergency loans [~~made under the Education Code §56.051shall be maintained~~] for review by the State Auditor.

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

Filed with the Office of the Secretary of State, on April 30, 2001.

TRD-200102455
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Proposed date of adoption: July 20, 2001
For further information, please call: (512) 427-6162

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS FOR ALL GRANT AND SCHOLARSHIP PROGRAMS DESCRIBED IN THIS CHAPTER

19 TAC §22.6

Texas Higher Education Coordinating Board proposes amendments to §22.6 concerning the General Provisions for all Grant and Scholarship Programs Described in Chapter 22. Specifically, these amendments will allow for increased efficiency in awarding grant monies to eligible students by allowing for flexibility in setting reallocation dates and by allowing certain financial aid programs to be administered as campus-based programs whereby all awarding and adjustments would be handled locally at the institution of higher education.

Lois Hollis, Acting Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments to the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Ms. Hollis has also determined that for each year of the first five years the amendments to the rules are in effect, the public benefit anticipated as a result of administering these amendments to the rules will be the increased number of students served. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the amendments to the rules as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under the Texas Education Code, §56.002, which provides the Coordinating Board with the authority to establish financial assistance programs to enable qualified students to receive a postsecondary education; §56.503, which provides the Coordinating Board with the authority to administer the TEXAS Grant program; §61.221, which provides the Coordinating Board with the authority to provide tuition equalization grants to Texas residents enrolled in any approved private Texas college or university; §61.652, which provides the Coordinating Board with the authority to establish a scholarship program for professional and vocational nursing students; §61.751, which provides the Coordinating Board with the authority to establish and administer scholarships for fifth-year accounting students; and Texas Education Code, §61.027.

The amendments affect Texas Education Code, §§56.002, 56.303, 61.221, 61.652, and 61.751; and the Texas Transportation Code, Subchapter F.

§22.6. Awards and Adjustments.

(a) (No change.)

(b) Allocations and Reallocations. Unless otherwise indicated, institutions will have until a date specified by the Coordinating Board [~~November 30 of each year~~] to certify all funds allocated to their students. As of that date [~~December 1~~], uncertified funds are available for reallocation to students at other institutions on a first come/first served basis. If necessary for ensuring the full use of funds, a second reallocation deadline will be set by the Board, after which time reallocations are continuous until all funds are awarded and disbursed. Reallocation dates are to be announced prior to the start of each year to enable institutions to plan accordingly [~~Once all uncertified funds are reallocated, allotments to students at each institution are fixed until March 15. After March 15, reallocations are continuous until all funds are awarded and disbursed~~].

(c) Certification and Disbursement Procedures. Unless otherwise indicated, on receipt of certification by the program officer of the amount of the grant or scholarship for which the student is eligible, the commissioner or another designated member of the staff of the board shall request such funds from the state comptroller's office and forward the funds to the institution for disbursement to the student or for crediting to the student's account. Institutions approved to administer a grant program as a campus-based program shall periodically be disbursed funds in lump-sum amounts based on receipt of certification by the Program Officer of the amounts required to meet recent disbursements to students, or to cover disbursements to be made within three days of the receipt of the state funds.

(d)-(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 April 30, 2001.

TRD-200102456
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Proposed date of adoption: July 20, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER I. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENT SCHOLARSHIP PROGRAM

19 TAC §22.163

Texas Higher Education Coordinating Board proposes an amendment to §22.163 concerning the Fifty-Year Accounting Student Scholarship Program. Specifically, this amendment will require recipients to have completed at least 15 hours of accounting when they receive their scholarships, thus increasing the probability that an award recipient will pursue a career in accounting.

Lois Hollis, Acting Assistant Commissioner for Student Services has determined that for each year of the first five years the amendments to the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules as proposed.

Ms. Hollis has also determined that for each year of the first five years the amendment to the rules is in effect, the public benefit anticipated as a result of administering this amendment to the rules will be an increased percentage of the students receiving scholarships who go on to sit for the Texas Certified Public Accountancy examination and pursue careers in accounting. There will be no effect on small businesses. There is no anticipated economic costs to institutions required to comply with the amendments to the rules as proposed. There is no impact on local employment.

Comments on the proposed amendments to the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendment to the rules is proposed under the Texas Education Code, §61.751, which provides the Coordinating Board with the authority to establish and administer scholarships for fifth-year accounting students.

The amendments affect Texas Education Code, §61.751.

§22.163. Eligible Students.

(a) To receive funds, a student must

(1) meet the general eligibility requirements of this chapter,

(2) have completed <u>at least</u> 120 credit hours of college work, <u>including at least 15 hours of accounting,</u> and

(3) (No change.)

(b) (No change.)

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

Filed with the Office of the Secretary of State, on April 30, 2001.

TRD-200102458
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Proposed date of adoption: July 20, 2001
For further information, please call: (512) 427-6162

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL
SUBCHAPTER AA. TEACHER APPRAISAL

19 TAC §150.1006, §150.1008

The Texas Education Agency (TEA) proposes amendments to §150.1006 and §150.1008, concerning the educator appraisal system. Section 150.1006 establishes qualifications of teacher appraisers, including required training. Section 150.1008 describes appraisal training opportunities that are to be available for teachers. The proposed amendments revise the requirements to become a certified appraiser for the commissioner's recommended teacher appraisal system, the Professional Development System (PDAS), and expand professional development opportunities for teachers.

The Texas Teacher Appraisal System (TTAS) was developed and implemented in the spring of 1986 to support the Texas Teacher Career Ladder. All administrators who were appraisers at the time were trained and certified. Simultaneously, Instructional Leadership Training (ILT) was developed and implemented. The ILT was a 36-hour training program designed to help appraisers understand and identify quality instruction in order to help teachers use more effective instruction in the classroom as they were implementing TTAS. In 1991, the 72nd Texas Legislature deleted the Texas Teacher Career Ladder and allowed districts to continue using TTAS or to develop their own teacher appraisal system with the commissioner's approval. In 1995, the 74th Texas Legislature approved provisions for a teacher appraisal system to be recommended by the commissioner that would hold teachers accountable for discipline management procedures and for the performance of the teachers' students.

In 1997, the PDAS was developed and implemented, fulfilling the requirement of the legislation. Since this time districts could adopt PDAS or develop their own teacher appraisal system with the review of the district decision-making committee and the approval of the local board of trustees. Currently, more than 90 percent of Texas school districts are using the PDAS. In order for incoming administrators to be more effective instructional leaders in the implementation of the PDAS, the commissioner directed staff and other educators to develop Instructional Leadership Development (ILD) training.

Currently, 19 TAC §150.1006 requires satisfactory completion of ILT to become a certified appraiser for PDAS. The proposed amendment to this section would incorporate the requirement of satisfactory completion of the revised ILD training to become a certified appraiser for PDAS and establishes dates to phase in the new ILD training as a replacement for ILT. Section 150.1008 lists ILT as training in which all teachers are eligible to participate. The proposed amendment to this section adds ILD training as an available professional development opportunity.

Robert Muller, associate commissioner for continuing education and school improvement, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Muller and Criss Cloudt, associate commissioner for accountability reporting and research, have determined that for

each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that administrators are better prepared to support teachers in enhancing student learning. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Criss Cloudt, 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 sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §21.351, which authorizes the commissioner of education to adopt a recommended appraisal process and criteria on which to appraise the performance of teachers.

The proposed amendments implement the Texas Education Code, §21.351.

§150.1006. Appraiser Qualifications.

(a) The teacher-appraisal process requires at least one appraiser.

(b) The teacher's supervisor shall conduct the teacher's appraisal and must hold a superintendent, mid-management (principal), or supervisor certification, or must hold comparable certificates established by the State Board for Educator Certification. An appraiser other than the teacher's supervisor must be approved by the school district board of trustees, hold a valid teaching certificate, and have at least three years of prekindergarten, elementary, or secondary teaching experience.

(c) An appraiser who is a classroom teacher may not appraise the performance of another classroom teacher who teaches at the same school campus at which the appraiser teaches, unless it is impractical because of the number of campuses or unless the appraiser is the chair of a department or grade-level whose job description includes classroom observation responsibilities.

(d) Before conducting an appraisal, an appraiser must be certified by having satisfactorily completed uniform appraiser training, including required Instructional Leadership Training (ILT) or Instructional Leadership Development (ILD) training, with a trainer and curriculum approved by the commissioner of education. Periodic recertification and training shall be required.

(1) Educators certified as appraisers for the Texas Teacher Appraisal System (TTAS) before January 1997 shall be required to take only the Professional Development and Appraisal System (PDAS) training to qualify as a certified appraiser for the new system. Beginning June 1, 2002, individuals seeking to become PDAS appraisers must comply with requirements specified in subsection (d)(3) of this section.

(2) Educators seeking certification as an appraiser for the PDAS after January 1, 1997, and no later than June 1, 2002, holding no prior TTAS certification, shall be required to complete the ILT or ILD training and the PDAS training with the successful completion of ILT or ILD training as a prerequisite to the PDAS training.

(3) Educators seeking certification as an appraiser for the PDAS after June 1, 2002, shall be required to complete ILD training and the PDAS training with successful completion of ILD training as a prerequisite to the PDAS training.

§150.1008. Training of Teacher Participants.

(a) In the initial year of adoption and implementation of the Professional Development and Appraisal System (PDAS), selected teachers from each campus shall be given the opportunity to participate in the appraisal training for purposes of disseminating information to colleagues on their campus and assisting, at the discretion of the principal, in the orientation of all campus teachers. These teachers shall be designated as appraisal-orientation facilitators.

(1) Each campus shall offer the opportunity to participate in appraisal training to a number of teachers equal to the number of campus administrators; however, each campus shall have at least one teacher participant.

(2) The principal shall select representative teachers from nominations submitted by the site-based decision making (SBDM) committee created in accordance with Texas Education Code, §11.251. The principal may select representatives other than those nominated by the SBDM committee when nominated teachers are unable to attend appraisal training.

(3) Each school district shall pay the training fees for its teachers attending the PDAS appraisal training.

(b) School districts and regional education service centers shall make available additional training for teachers as part of the district's and education service center's menu of professional development opportunities. All teachers are eligible to participate in appraisal and/or Instructional Leadership Training or Instructional Leadership Development training at their own expense. Executive directors of regional education service centers may prescribe appropriate registration fees to offset the cost of providing these services.

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

Filed with the Office of the Secretary of State, on May 3, 2001.

TRD-200102529
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 463-9701

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 406. ICF/MR PROGRAMS

SUBCHAPTER E. ELIGIBILITY AND REVIEW

25 TAC §§406.201 - 406.217

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

The Texas Department of Mental Health and Mental Retardation (department) proposes the repeals of §§406.201 - 406.217 of Chapter 406, Subchapter E, concerning Eligibility and Review.

The subject matter of the sections that are being repealed is addressed in new sections of Chapter 419, Subchapter E, concerning ICF/MR Program, which was proposed for public review and comment in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2488).

The repeals are part of a comprehensive reorganization of chapters and subchapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review of agency rules required by Texas Government Code, §2001.039 (as added by Senate Bill 178, §1.11, 76th Legislature).

Bill Campbell, Deputy Commissioner, Finance and Administration, has determined that for each year of the first five years the repeals are in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local government.

Ernest McKenney, Director, Medicaid Administration, has determined that for each year of the first five-year period the repeals are in effect, the public benefit expected is the existence of ICF/MR Program rules that are organized in a manner that maximizes their accessibility by program providers, department and survey agency staff, consumers, family members, advocates, and other stakeholders. It is not anticipated that the repeals will have an adverse economic effect on small businesses or micro-businesses because they do not impose any measurable cost to ICF/MR Program providers. It is not anticipated that there will be an economic cost to persons required to comply with the repeals. It is not anticipated that the repeals will affect a local economy.

Comments concerning the proposed repeals must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to (512) 206-4750, within 30 days of publication of this notice.

The repeals are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the ICF/MR Program.

The proposed repeals affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§406.201. Purpose and Applicability.

§406.202. Definitions.

§406.203. Eligibility Criteria.

§406.204. LOC Determination and LON Assignment.

§406.205. ICF/MR I LOC Criteria.

§406.206. ICF/MR V LOC Criteria.

§406.207. ICF/MR VI LOC Criteria.

§406.208. ICF/MR/RC VIII LOC Criteria.

§406.209. Retroactive LOC Determination.

§406.210. Reconsideration of LOC Determination and Effective Dates.

§406.211. Payment for Absences from the Facility.

§406.212. Discharge.

§406.213. Utilization Control.

§406.214. Utilization Review.

§406.215. Individuals' Right to Fair Hearing.

§406.216. Admission Limitation.

§406.217. Service Authorizations.

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

Filed with the Office of the Secretary of State, on May 7, 2001.

TRD-200102566
Andrew Hardin
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 206-5232

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 20. EDWARDS AQUIFER AUTHORITY

CHAPTER 707. PROCEDURE BEFORE THE AUTHORITY

INTRODUCTION

The Edwards Aquifer Authority ("Authority") proposes amendments to §§707.309, 707.405, 707.515, and 707.605 of its rules in order to correct errors in the text of those rules as published in the *Texas Register* and codified in the Texas Administrative Code.

BRIEF EXPLANATION OF EACH AMENDMENT

On October 10, 2000, the Authority issued a final order adopting its Chapter 707 rules (relating to Procedure Before the Authority). That final order was published in the November 3, 2000 issue of the *Texas Register* (25 TexReg 10944-10979) (2000).

Six inconsistencies appear in these rules as published in the *Texas Register* and as codified in Title 31, Texas Administrative Code. By the term "inconsistencies," the Authority refers to instances in which the language that was published in the *Texas Register* and codified in the Texas Administrative Code does not reflect the language adopted by the Board of Directors of the Authority ("Board"), as reflected in the Board minutes on file at the Authority's offices. The amendments that are the subject of this notice are proposed to correct these inconsistencies. As a result of these amendments, the Authority's rules, as codified in the Texas Administrative Code, will reflect the rules that were

approved by the Board. The following is a brief description and explanation of each amendment.

Section 707.309 of the Authority's rules concerns the requirements for well owners to file an application for a permit to install or modify a meter. The second sentence of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, contains a typographical error whereby the word that was intended to read "modify" mistakenly reads "moAdify." The Authority proposes to amend section 707.309 to correct this error.

Section 707.405 of the Authority's rules lists required contents for an application for an initial regular permit. Paragraph (3) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, requires such an application to contain "the proposed maximum rate of withdrawal . . . ." The rule that the Board adopted requires the application to contain "the maximum rate of withdrawal . . . ." The word "proposed" was mistakenly published in the *Texas Register* and codified in the Texas Administrative Code. In addition, paragraph (4) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, requires such an application to contain "the method to be used to withdraw groundwater. . . ." The rule that the Board adopted requires the application to contain "the method used to withdraw groundwater. . . ." The words "to be" were mistakenly published in the *Texas Register* and codified in the Texas Administrative Code. The Authority proposes to amend section 707.405 to correct these errors.

Section 707.515 delegates authority to the general manager to take action on behalf of the Board. Paragraph (1) of subsection (b) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, lists "applications for new well construction permits" as one type of application that the general manager may grant. The version of §707.515(b)(1) that the Board adopted lists "applications for well construction permits." The word "new" was mistakenly published in the *Texas Register* and codified in the Texas Administrative Code. In addition, paragraph (4) of subsection (b) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, lists "applications to: (1) transfer interim authorization status and amend applications for initial regular permit; and (2) transfer and amend permit in all instances other than when the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek." However, the version of §707.515(b)(4) that the Board adopted applies the qualifying language, "in all instances other than when the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek" to both applications to transfer interim authorization status and amend applications for initial regular permit and to applications to transfer and amend permit. The version of §707.515(b)(4) published in the *Texas Register* and codified in the Texas Administrative Code mistakenly applies the qualifying language only to applications to transfer and amend permit. The Authority proposes to amend section 707.515 to correct these errors.

Section 707.605 provides procedures for the processing of requests for contested case hearings by the Authority. Subsection (c) of that section pertains to the notice that is required to be provided by the docket clerk regarding the Board's consideration of such a request. The first sentence of that subsection, as published in the *Texas Register* and codified in the Texas Administrative Code, contains a typographical error whereby the docket clerk is required to give notice of the Board's consideration of the hearing requests "30 days prior to the first meeting at which the board considers the request." The rule that the Board adopted requires the docket clerk to provide such notice "30 days prior to the first meeting at which the board considers the request." The Authority proposes to amend section 707.605 to correct this error.

FISCAL NOTE

Gregory M. Ellis, General Manager of the Authority, is responsible for approving the Fiscal Note that was prepared for these proposed amendments. Mr. Ellis has determined that for each year of the first five years that these proposed amendments will be in effect, there will be no: (1) additional costs; (2) reduction in costs; (3) loss in revenues; or (4) increase in revenues to state or local governments expected as a result of enforcing or administering these amendments.

PUBLIC BENEFIT AND COST NOTE

Mr. Ellis is responsible for approving the Public Benefit and Cost Note that was prepared for these proposed amendments. Mr. Ellis has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefits expected as a result of adoption of the proposed amendments will be the elimination of any possible confusion regarding the rules that are the subject of these amendments and to assure that the version of the Authority's rulers codified in the Texas Administrative Code reflects precisely the version of those rules that were actually approved by the Board. Mr. Ellis has determined that for each year of the first five years that the proposed amendments will be in effect, there are no probable economic costs to person required to comply with these amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Section 2001.022 of the Texas Government Code requires agencies to request that the Texas Workforce Commission prepare a Local Employment Impact Statement (LEIS) if the agency determines that a rule may affect a local economy. Mr. Ellis has determined that the proposed amendments will not affect a local economy and that, therefore, there is no need to request the preparation of a LEIS.

REQUEST FOR WRITTEN COMMENTS ON THE PROPOSED AMENDMENTS FROM INTERESTED PERSONS

Interested persons may submit written comments on these proposed amendments. Comments must be submitted in writing to Ms. Brenda Davis, Docket Clerk, Edwards Aquifer Authority, 1615 N. St. Mary's Street, San Antonio, Texas 78215, within 30 days of the publication of this notice in the *Texas Register*. The written comments should be filed on 81/2 x 11-inch paper and be typed or legibly written. Written comments must indicate whether the comments are generally directed to all of the proposed amendments, or whether they are directed at specific proposed amendments. If directed at specific proposed amendments, the number of the rule proposed to be amended must be identified and followed by the comments thereon.

SUBCHAPTER D. REQUIREMENTS TO FILE APPLICATIONS AND REGISTRATION

31 TAC §707.309

STATEMENT OF AUTHORITY TO ADOPT RULES

The rules were originally adopted and are now being amended under §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(b), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Edwards

Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act") and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-2001.902 (Vernon 2000) ("APA").

Section 1.08(a) of the Act provides that the Authority "has all of the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer." This section provides the Authority with broad and general powers to take actions as necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer.

Section 1.11(a) of the Act provides that the Board "shall adopt rules necessary to carry out the authority's powers and duties under (Article 1 of the Act), including rules governing procedures of the board and the authority." This section requires the Board to adopt rules as necessary to implement the various substantive programs set forth in the Act related to the Edwards Aquifer, including, in particular, administrative procedures of the Authority.

Section 1.11(b) of the Act requires the Authority to "ensure compliance with permitting, metering, and reporting requirements and shall regulate permits." This section, in conjunction with §§1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, requires the Authority to establish procedures related to the filing and processing of various applications and registrations with the Authority.

Section 1.11(h) of the Act provides, among other things, that the Authority is "subject to" the APA. Pursuant to this section, the Authority is required to comply with the APA in connection with its rulemaking, even though the Authority is not a state agency and would therefore otherwise not generally be subject to APA requirements. Section 2001.004(1) of the APA requires agencies subject to the APA to "adopt rules of practice stating the nature and requirements of all available formal and informal procedures."

Section 1.15(a) of the Act directs the Authority to manage withdrawals from the aquifer and manage all withdrawal points from the aquifer as provided by the Act. This section, in conjunction with §§1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, requires the Authority to adopt procedural rules that would allow the Authority to fulfill these mandates.

Section 1.15(b) of the Act states that "except as provided by §§ 1.17 and 1.33 of (Article 1 of the Act), a person may not withdraw water from the aquifer or begin construction of a well or other works designed for the withdrawal of water from the aquifer without obtaining a permit from the authority." This section, in conjunction with §§1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, requires the Authority to adopt procedural rules that will implement this limitation.

Section 1.15(c) of the Act allows the Authority to issue regular permits, term permits, and emergency permits. This section, in conjunction with §§1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, empowers the Authority to establish procedures related to the filing and processing of applications for initial and additional regular permits, term permits and emergency permits.

Section 1.16(a) of the Act allows an existing user to apply for an initial regular permit by filing a declaration of historical use. This section, in conjunction with §§1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, requires the Authority to adopt procedural rules governing the filing and processing of such applications or declarations.

Section 1.16(b) of the Act sets forth certain requirements concerning an existing user's declaration of historical use and an applicant's payment of application fees required by the Board. This section, in conjunction with §§1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, requires the Authority to adopt procedural rules that will implement these requirements.

Section 1.16(d) of the Act requires the Board to grant an initial regular permit to an existing user who: (1) files a declaration and pays fees as required by this section; and (2) establishes by convincing evidence beneficial use of underground water from the aquifer. This section, in conjunction with §§1.11(a) and (h) of the Act, and section 2001.004(1) of the APA, requires the Authority to adopt procedural rules that will allow the Authority to fulfill this mandate.

The articles or sections of the Act or any other code that are affected by the proposed rule are: §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§707.309, 707.405, 707.515, and 707.605.

§707.309. Requirement to File Application for Permit to Install or Modify Meter.

Any person seeking to install a new meter or modify an existing meter must file with the Authority an application for a permit to install or modify a meter. Any person seeking to employ an alternative measuring method or modify an existing alternative measuring method must file with the Authority an application for a permit to install or modify[~~moAdify~~] a meter as well. For the purpose of this chapter, the term "modify" in connection with a meter means to make any physical change to the meter other than standard maintenance. Meters registered with the Authority prior to the effective date of these rules through the filing of forms previously prescribed by the Authority need not file another meter registration.

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

Filed with the Office of the Secretary of State, on May 7, 2001.

TRD-200102544
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: June 17, 2001
For further information, please call: (210) 222-2204

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SUBCHAPTER E. REQUIREMENTS FOR APPLICATIONS AND REGISTRATION

31 TAC §707.405

These rules were originally adopted and are now being amended under §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(b), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Tex Gen. Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act") and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§ 2001.001-.902 (Vernon 2000) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§707.309, 707.405, 707.515, and 707.605.

§707.405. Applications for Initial Regular Permits/Declarations of Historical Use.

In addition to the information specified in §707.401 of this title (relating to Contents of and Requirements for All Applications and Registrations), an application for an initial regular permit shall contain the following:

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

(3) Rate of Withdrawal. The [~~proposed~~] maximum rate of withdrawal in gallons per minute or cubic feet per second each well is capable of producing shall be stated.

(4) Method of Withdrawal. The method [~~to be~~] used to withdraw groundwater shall be described.

(5) (No change.)

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

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For further information, please call: (210) 222-2204

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SUBCHAPTER F. ACTIONS ON APPLICATIONS AND REGISTRATIONS BY THE AUTHORITY

31 TAC §707.515

These rules were originally adopted and are now being amended under §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(b), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Tex Gen. Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act") and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-.902 (Vernon 2000) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§707.309, 707.405, 707.515, and 707.605.

§707.515. Actions on Applications by the General Manager.

(a) (No change.)

(b) The general manager may grant the following:

(1) applications for [~~new~~] well construction permits;

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

(4) applications to:

(A) transfer interim authorization status and amend application for initial regular permit in all instances other than when the location of the point of withdrawal is proposed to be transferred from west of Cibolo Creek to east of Cibolo Creek; or

(B) (No change.)

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

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

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

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SUBCHAPTER G. PROCEDURES FOR CONTESTED CASE HEARINGS ON APPLICATIONS

31 TAC §707.605

These rules were originally adopted and are now being amended under §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(b), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act") and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-.902 (Vernon 2000) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: §§1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.15(a), 1.15(c), 1.16(a), 1.16(b), 1.16(d), and 1.24(c) of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§707.309, 707.405, 707.515, and 707.605.

§707.605. Processing of Hearing Request.

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

(c) The docket clerk shall provide notice to the applicant, general manager and any persons making a timely hearing request at least 30 [~~20~~] days prior to the first meeting at which the board considers the request. The docket clerk shall explain how the person may submit public comment, explain that the board may hold a public meeting, and explain the requirements of this subchapter.

(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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CHAPTER 711. GROUNDWATER WITHDRAWAL PERMITS

INTRODUCTION

The Edwards Aquifer Authority ("Authority") proposes amendments to §§711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406 of its rules in order to correct errors in the text of those rules as published in the *Texas Register* and codified in the Texas Administrative Code.

BRIEF EXPLANATION OF EACH AMENDMENT

On October 10 and 11, 2000, and on December 18, 2000, the Authority issued final orders adopting its Chapter 711 rules (relating to Groundwater Withdrawal Permits). Those final orders were published in the November 3, 2000, and the January 12, 2001, issues of the *Texas Register* (25 TexReg 10996-11076) (2000) (adopting Subchapters A, B, E, F, G, and I of Chapter 711), (26 TexReg 633-688) (2001) (adopting Subchapters C, D, H, K, L, and M of Chapter 711).

Sixteen inconsistencies appear in these rules as published in the *Texas Register* and as codified in Title 31, Texas Administrative Code. By the term "inconsistencies," the Authority refers to instances in which the language that was published in the *Texas Register* and codified in the Texas Administrative Code does not reflect the language adopted by the Board of Directors of the Authority ("Board"), as reflected in the Board minutes on file at the Authority's offices. The amendments that are the subject of this notice are proposed to correct these inconsistencies. As a result of these amendments, the Authority's rules, as codified in the Texas Administrative Code, will reflect the rules that were approved by the Board. The following is a brief description and explanation of each amendment.

Section 711.68 of the Authority's rules specifies the uses to which water withdrawn from a well during the interim authorization period may be placed. Section 711.68, as published in the *Texas Register* and codified in the Texas Administrative Code, states that "during the interim authorization period, a person owning a well qualifying for interim authorization status may beneficially use groundwater withdrawn from the aquifer through the well only for the purpose(s) of use designated in the person's declaration and falling within one or more of the following categories...." The version of §711.68 adopted by the Board states that "during the interim authorization period, a person owning a well qualifying for interim authorization status may beneficially use groundwater withdrawn from the aquifer through the well for the purpose(s) of use designated in the person's declaration and falling within one or more of the following categories...." The word "only" was mistakenly published in the *Texas Register* and codified in the Texas Administrative Code. The Authority proposes to amend §711.68 to correct this error.

Section 711.100 of the Authority's rules identifies those who may apply for an additional regular permit, states when such an application may be made, describes the attributes of such a permit, and lists the elements that an applicant must prove in order to be granted such a permit. Subparagraph (B) of subsection (j)(8) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, mistakenly contains the phrase "of this chapter." The version of subparagraph (B) adopted by the Board does not include that phrase. The Authority proposes to amend §711.100 to correct this error.

Section 711.102 of the Authority's rules identifies those who may apply for a term permit, states when such an application may be made, describes the attributes of that type of permit, and lists the elements that an applicant must prove in order to be granted such a permit. Paragraph (14) of subsection (f) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, mistakenly includes the plural term "systems" instead of the singular "system." The version of paragraph (14) adopted by the Board uses the singular. The Authority proposes to amend §711.102 to correct this error.

Section 711.104 of the Authority's rules identifies those who may apply for an emergency permit, describes the attributes of that type of permit, and lists the elements that an applicant must prove in order to be granted such a permit. Paragraph (7) of subsection (e) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, mistakenly includes the adjective "beneficial" instead of the adverb "beneficially." The version of paragraph (7) adopted by the Board uses the adverb "beneficially." The Authority proposes to amend §711.104 to correct this error.

Section 711.112 of the Authority's rules identifies the contents of well construction permits issued by the Authority. Paragraph (13) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, mistakenly contains the phrase "of the chapter" instead of the phrase "of this chapter." The version of paragraph (13) adopted by the Board includes the phrase "of this chapter." The Authority proposes to amend §711.112 to correct this error.

Section 711.134 of the Authority's rules lists the conditions to which all groundwater withdrawal permits issued by the Authority are subject. Paragraph (14) of that section, as published in the

Texas Register and codified in the Texas Administrative Code, mistakenly includes the word "and" at the end of that subsection. The version of paragraph (14) adopted by the Board does not include the word "and" at the end of that subsection. The Authority proposes to amend §711.134 to correct this error.

Section 711.176 of the Authority's rules establishes and explains how groundwater withdrawal amounts in initial regular permits will be determined. Subsection (b) of that section sets forth the method of calculating a groundwater withdrawal amount under six different scenarios. Subsection (b) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, mistakenly includes the plural word "amounts" instead of the singular "amount." The version of subsection (b) adopted by the Board uses the singular. The Authority proposes to amend §711.176 to correct this error.

Subsection (c) of §711.176 explains that initial regular permits may be issued with provisional groundwater withdrawal amounts. Subsection (c), as published in the *Texas Register* and codified in the Texas Administrative Code, contains several punctuation errors. Specifically, it does not include a period after the phase "groundwater withdrawal amount" in the first sentence. Also, it includes a period after the parenthetical "(relating to Proportional Adjustment of Initial Regular Permits)" and begins a new sentence immediately following that parenthetical. The version of subsection (c) adopted by the Board includes a period after the phase "groundwater withdrawal amount" in the first sentence and a comma (instead of a period) after the parenthetical. The Authority proposes to amend §711.176 to correct these errors as well.

Section 711.302 of the Authority's rules concerns the authority of the Board to issue an order increasing the cap on permitted withdrawals and lists several findings that the Board must make in order to allow for such action. Paragraph (1) of that section lists one of those findings and, as published in the *Texas Register* and codified in the Texas Administrative Code, refers to "Comal Springs and San Marcos Springs." The version of §711.302 adopted by the Board refers to "Comal Springs or San Marcos Springs." The Authority proposes to §711.302 to correct this error.

Section 711.338 of the Authority's rules concerns the transfer of "base irrigation groundwater." Subsection (a) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, mistakenly begins "except as provided in subsection (b), ..." The version of subsection (a) adopted by the Board begins "except as provided in subsections (b) and (c), ..." The Authority proposes to amend §711.338 to correct this error.

Also, the version of §711.338 adopted by the Board includes subsection (c), which states as follows:

"A permittee may temporarily transfer by a lease with a term not in excess of ten years the place of use for all or part of an initial regular permit issued for base irrigation groundwater to another place of use not owned by the permittee. If the permittee subsequently transfers the ownership of the place of use of the initial regular permit to a third party, then §711.328(c) of this chapter (relating to Transfer of Ownership) would then control, and the base irrigation groundwater shall pass with the transfer of ownership of the irrigated lands identified as the place of use in the initial regular permit. However, the third party to which the permittee transferred the ownership of the place of use of the initial regular permit shall take title of the irrigated lands subject to the lease during its term."

Subsection (c) was omitted in its entirety from the version of §711.338 that was published in the *Texas Register* and codified in the Texas Administrative Code. The Authority proposes to amend §711.338 to correct this error.

Also, the Authority's response to public comment bearing on the addition of subsection (c) to §711.338 was omitted from the *Texas Register* as well. In that response, the Authority noted that the basic points of §1.34(c) of the Act is that groundwater should be available for irrigation purposes within the jurisdiction of the Authority and that Base Irrigation Groundwater (BIG) should remain appurtenant to the place of use identified in the original initial regular permits (IRPs) issued by the Authority. However, and also as explained in that response, the purpose of the appurtenancy rule would not be served by prohibiting transfers of a well owner's BIG to another place of use not owned by the owner of the BIG if the transfer is temporary and for a sufficiently short period of time such as not to constitute a transfer of the BIG to another place of use in violation of the appurtenancy rule and so long as the groundwater will continue to be used for irrigation purposes. In this context, if the owner of the place of use identified in the IRP to which the BIG is appurtenant sought to transfer the ownership of the place of use, then the appurtenancy rule would control over the transfer of the BIG to another place of use not owned by the transferor and the transferee would acquire the BIG due to the operation of §1.34(c) of the Act, although such acquisition would be subject to the term of the lease by which the temporary transfer of the place of use (but not the purpose of use) was effectuated. In this context, the BIG would continue to be used for irrigation purposes so long as the irrigated lands to which the BIG is appurtenant continue to be suitable for irrigation and the BIG would not be permanently severed from the irrigated lands constituting the original place of use in the original IRP in violation of the appurtenancy rule.

Section 711.402 of the Authority's rules concerns the duty of well owners to install and operate meters on their wells. Subsection (d) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, concerns the accuracy of such a meter and states that it "shall ensure an error of not greater than +five percent." The version of subsection (d) adopted by the Board states that such a meter "shall ensure an error of not greater than ± five percent." The Authority proposes to amend §711.402 to correct this error.

Section 711.406 of the Authority's rules concerns approval for the installation of meters. Subsections (a) and (b) of this section, as published in the *Texas Register* and codified in the Texas Administrative Code, include several errors in punctuation. Specifically, as published in the *Texas Register* and codified in the Texas Administrative Code, these subsections mistakenly include several commas and omit one comma. Also, paragraph (1) of subsection (b) of that section, as published in the *Texas Register* and codified in the Texas Administrative Code, states that the general manager shall approve an application to install or modify a meter if the application shows that "the meter . . . has a certified error of not greater than +five percent." The version of paragraph (1) of subsection (b) adopted by the Board refers to the requirement that "the meter . . . has a certified error of not greater than ± five percent." The Authority proposes to amend §711.406 to correct these errors.

FISCAL NOTE

Gregory M. Ellis, General Manager of the Authority, is responsible for approving the Fiscal Note that was prepared for these proposed amendments. Mr. Ellis has determined that for each year of the first five years that these proposed amendments will be in effect, there will be no: (1) additional costs; (2) reduction in costs; (3) loss in revenues; or (4) increase in revenues to state or local governments expected as a result of enforcing or administering these amendments.

PUBLIC BENEFIT AND COST NOTE

Mr. Ellis is responsible for approving the Public Benefit and Cost note that was prepared for these proposed amendments. Mr. Ellis has determined that for each year of the first five years that the proposed amendments will be in effect, the public benefits expected as a result of adoption of the proposed amendments will be elimination of any possible confusion regarding the rules that are the subject of these amendments and to assure that the version of the Authority's rules codified in the Texas Administrative Code reflects precisely the version of those rules that were actually approved by the Board. Mr. Ellis has determined that for each year of the first five years that the proposed amendments will be in effect, there are no probable economic costs to persons required to comply with these amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Section 2001.022 of the Texas Government Code requires agencies to request that the Texas Workforce Commission prepare a Local Employment Impact Statement (LEIS) if the agency determines that a rule may affect a local economy. Mr. Ellis has determined that the proposed amendments will not affect a local economy and that, therefore, there is no need to request the preparation of a LEIS.

REQUEST FOR WRITTEN COMMENTS ON THE PROPOSED AMENDMENTS FROM INTERESTED PERSONS

Interested persons may submit written comments on these proposed amendments. Comments must be submitted in writing to Ms. Brenda Davis, Docket Clerk, Edwards Aquifer Authority, 1615 North St. Mary's Street, San Antonio, Texas 78215, within 30 days of the publication of this notice in the *Texas Register*. The written comments should be filed on 81/2 x 11-inch paper and be typed or legibly written. Written comments must indicate whether the comments are generally directed at all of the proposed amendments, or whether they are directed at specific proposed amendments. If directed at specific proposed amendments, the number of the rule proposed to be amended must be identified and followed by the comments thereon.

SUBCHAPTER D. INTERIM AUTHORIZATION

31 TAC §711.68

STATEMENT OF AUTHORITY TO ADOPT RULES

These rules were originally adopted and are now being amended under §§1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and §2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-2001.902 (Vernon 2000)) ("APA").

Section 1.03(11) of the Act defines "industrial use." Section 1.03(12) of the Act defines "irrigation use." Section 1.03(14) of the Act defines "municipal use."

Section 1.08(a) of the Act provides that the Authority "has all of the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer."

Section 1.11(a) of the Act provides that the Board "shall adopt rules necessary to carry out the authority's powers and duties under (Article 1 of the Act), including rules governing procedures of the board and the authority."

Section 1.11(b) of the Act requires the Authority to "ensure compliance with permitting, metering, and reporting requirements and . . . regulate permits." The Authority interprets this section, in conjunction with §1.11(a) and (h) of the Act, and § 2001.004(1) of the APA, to require the Authority to adopt and enforce rules related to the Authority's permit program.

Section 1.11(h) of the Act provides, among other things, that the Authority is "subject to" the APA. This section essentially provides that the Authority is required to comply with the APA for its rulemaking, even though the Authority is a political subdivision and not a state agency, and therefore, would typically not be subject to APA requirements.

Section 1.14(d) of the Act provides that the statutory "caps" on the amount of permitted withdrawals may be raised by the Authority if, through studies and implementation of certain strategies, the Authority, in consultation with state and federal agencies, determines the caps may be raised.

Section 1.15(a) of the Act directs the Authority to manage withdrawals from the aquifer and manage all withdrawal points from the aquifer as provided by the Act.

Section 1.15(b) of the Act states that "except as provided by §1.17 and §1.33 of this article, a person may not withdraw water from the aquifer or begin construction of a well or other works designed for the withdrawal of water from the aquifer without obtaining a permit from the authority."

Section 1.17(a) of the Act provides that a person who, on the effective date of Article 1 of the Act (i.e., June 28, 1996), owns a producing well that withdraws water from the aquifer may continue to withdraw and beneficially use water without waste until final action on permits by the Authority, if certain conditions are met.

Section 1.18 of the Act allows the Authority, in certain circumstances, to issue additional regular permits.

Section 1.19 of the Act allows the Authority to issue term permits and places certain limitations and conditions on the right to withdraw water under such a permit.

Section 1.20 of the Act allows the Authority to issue emergency permits under certain circumstances and subject to certain conditions.

Section 1.21 of the Act sets out a process by which the Authority is to implement a plan for reducing the withdrawal "cap" from 450,000 to 400,000 acre-feet per year by January 1, 2008. If, on or after January 1, 2008, total permitted withdrawals still exceed

the 400,000 acre-feet cap, then the Authority must implement "equal percentage reductions" of all permits in order to reach the cap.

Section 1.31 of the Act provides that nonexempt well owners must install and maintain meters or alternative measuring devices to measure the flow rate and cumulative amount of water withdrawn from each well. The section further provides that the Authority must pay for such meters on irrigation wells in existence on the effective date of the Act.

Section 1.34 of the Act authorizes the transfer of water rights and imposes certain limitations on such transfers. The Authority interprets the first sentence of subsection (c) of this section to provide that the owner of an initial regular permit for irrigation use may transfer the place or purpose of use not to exceed 50 percent of the groundwater withdrawal amount recognized in the original initial regular permit to any other place or purpose of use.

The articles or sections of the Act or any other code that are affected by the proposed rule are: §§1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and §2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

§711.68. Authorized Uses.

During the interim authorization period, a person owning a well qualifying for interim authorization status may beneficially use groundwater withdrawn from the aquifer through the well [~~only~~] for the purpose(s) of use designated in the person's declaration and falling within one or more of the following categories:

(1)-(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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SUBCHAPTER E. PERMITTED WELLS

31 TAC §§711.100, 711.102, 711.104, 711.112

These rules were originally adopted and are now being amended under §§1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§ 2001.001-2001.902 (Vernon 2000)) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: §§1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and §2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

§711.100. Additional Regular Permits.

(a)-(i) (No change.)

(j) Subject to the duty of the board to determine the amount of groundwater that may be withdrawn under an additional regular permit, the board shall grant an application for an additional regular permit if the following elements are established by convincing evidence:

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

(8) there remains water available for permitting after the board has made final determinations on:

(A) (No change.)

(B) any restorations of proportional adjustments or equal percentage reductions pursuant to §711.304 of this title (relating to Allocation of Additional Groundwater Supplies) [~~of this chapter~~]; and

(C) (No change.)

(9)-(12) (No change.)

(k) (No change.)

§711.102. Term Permits.

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

(f) Subject to the duty of the board to determine the amount of groundwater that may be withdrawn under a term permit, the board shall grant an application for a term permit if the following elements are established by convincing evidence:

(1)-(13) (No change.)

(14) if applicable, the applicant has or will have an approved existing on-site sewer <u>system</u> [~~systems~~], or has been granted an application to construct such a system by the appropriate regulatory agency;

(15)-(18) (No change.)

(g)-(h) (No change.)

§711.104. Emergency Permits.

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

(e) Subject to the duty of the board to determine the amount of groundwater that may be withdrawn under an emergency permit, the board shall grant an application for an emergency permit if the following elements are established by convincing evidence:

(1)-(6) (No change.)

(7) the place of use at which the withdrawals are proposed to be <u>beneficially</u> [~~beneficial~~] used is physically located within the boundaries of the authority;

(8)-(15) (No change.)

(f)-(g) (No change.)

§711.112. Contents of Groundwater Withdrawal Permits.

Groundwater withdrawal permits issued by the Authority shall contain the following:

(1)-(12) (No change.)

(13) if applicable, the equal percentage reduction amount as calculated pursuant to §711.174 of this chapter (relating to Equal Percentage Reduction of Initial Regular Permits) and subchapter H (relating to Withdrawal Reductions) and Regular Permit Retirement Rules of chapter 715 (relating to Comprehensive Management Plan Implementation of this title); the amount that may be subject to restoration pursuant to §711.172(h) of this chapter (relating to Proportional Adjustment of Initial Regular Permits) and §711.304 of this [~~the~~] chapter (relating to Allocation of Additional Groundwater Supplies);

(14)-(26) (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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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222-2204

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SUBCHAPTER F. STANDARD GROUNDWATER WITHDRAWAL CONDITIONS

31 TAC §711.134

These rules were originally adopted and are now being amended under §§1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-2001.902 (Vernon 2000)) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: §§1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and §2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

§711.134. Standard Conditions.

Any groundwater withdrawal permit issued by the authority is subject to and the permittee shall comply with the following conditions:

(1)-(13) (No change.)

(14) the keeping and filing of reports pursuant to subchapter M of this chapter (relating to Meters; Alternative Measuring Methods; and Reporting), and any other applicable law or rule; [~~and~~]

(15)-(32) (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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Gregory M. Ellis
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SUBCHAPTER G. GROUNDWATER AVAILABLE FOR PERMITTING; PROPORTIONAL ADJUSTMENT; EQUAL PERCENTAGE REDUCTION

31 TAC §711.176

These rules were originally adopted and are now being amended under §§1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§2001.001-2001.902 (Vernon 2000)) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: §§1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

§711.176. Groundwater Withdrawal Amounts for Initial Regular Permits; Compensation for Phase-2 Proportional Amounts.

(a) (No change.)

(b) If the aggregate maximum historical use of all applicants to be issued initial regular permits exceeds the amount of groundwater available for permitting in §711.164(a) of this chapter (relating to Groundwater Available for Permitted Withdrawals for Initial and Additional Regular Permits), then an applicant shall receive an initial regular permit authorizing the withdrawal of groundwater from the aquifer in the following amount [~~amounts~~]:

(1)-(6) (No change.)

(c) Initial regular permits issued by the board pursuant to this section may be issued with a provisional groundwater withdrawal

amount. Until [~~until~~] the total amount of groundwater permitted for withdrawal in initial regular permits is finally determined following an opportunity for contested case hearings on all initial regular permit applications, as provided in §711.172(f) of this chapter (relating to Proportional Adjustment of Initial Regular Permits), the [~~. The~~] authority may periodically issue Proportional Adjustment Orders in order to ensure that the amount of groundwater permitted for withdrawal in initial regular permits does not exceed the amount available for permitted withdrawals under §711.164 of this chapter (relating to Groundwater Available for Permitted Withdrawals for Initial and Additional Regular Permits).

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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Gregory M. Ellis
General Manger
Edwards Aquifer Authority
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SUBCHAPTER K. ADDITIONAL GROUNDWATER SUPPLIES

31 TAC §711.302

These rules were originally adopted and are now being amended under §§ 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§ 2001.001-.902 (Vernon 2000)) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§ 711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

§711.302. Board Order Increasing the Permitted Withdrawal Cap.

Based on the general manager's additional water supply report and the consultation report, the board may issue an order increasing the permitted withdrawal cap established in §711.164(a) and (b) of this chapter (relating to Groundwater Available for Permitted Withdrawals for Initial and Additional Regular Permits) if it finds that:

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

(4) withdrawal of the additional groundwater supplies will not reduce springflows at Comal Springs or [~~and~~] San Marcos Springs to levels prohibited by applicable federal or state law; and

(5) (No change.)

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

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Gregory M. Ellis
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SUBCHAPTER L. TRANSFERS

31 TAC §711.338

These rules were originally adopted and are now being amended under §§ 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§ 2001.001-.902 (Vernon 2000)) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§ 711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

§711.338. Transfer of Base Irrigation Groundwater.

(a) Except as provided in subsections [~~subsection~~] (b) and (c) of this section, a permittee may not transfer the place or purpose of use for all or part of an initial regular permit issued for base irrigation groundwater.

(b) (No change.)

(c) A permittee may temporarily transfer by a lease with a term not in excess of ten years the place of use for all or part of an initial regular permit issued for base irrigation groundwater to another place of use not owned by the permittee. If the permittee subsequently transfers the ownership of the place of use of the initial regular permit to a third party, then §711.328(c) of this chapter (relating to Transfer of Ownership) would then control, and the base irrigation groundwater shall pass with the transfer of ownership of the irrigated lands identified as the place of use in the initial regular permit. However the third party to which the permittee transferred the ownership of the place of use of the initial regular permit shall take title of the irrigated lands subject to the lease during its term.

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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Gregory M. Ellis
General Manager
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SUBCHAPTER M. METERS; ALTERNATIVE MEASURING METHODS; AND REPORTING

31 TAC §711.402, §711.406

These rules were originally adopted and are now being amended under §§ 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"), and section 2001.004(1) of the Texas Administrative Procedure Act (TEXAS GOVERNMENT CODE ANNOTATED §§ 2001.001-.902 (Vernon 2000)) ("APA").

The articles or sections of the Act or any other code that are affected by the proposed rule are: 1.03(11), 1.03(12), 1.03(13), 1.08(a), 1.11(a), 1.11(b), 1.11(h), 1.14(d), 1.15(a), 1.15(b), 1.17(a), 1.18, 1.19, 1.20, 1.21, 1.31, and 1.34 of the Act, and section 2001.004(1) of the APA. The sections of Chapter 31, Texas Administrative Code, that are to be affected are §§ 711.68, 711.100, 711.102, 711.104, 711.112, 711.134, 711.176, 711.302, 711.338, 711.402 and 711.406.

§711.402. Duty to Install and Operate Meter; Meter Installation Deadlines.

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

(d) Each meter shall be installed, operated, maintained, and repaired in accordance with the manufacturer's standards, instructions, or recommendations, and shall ensure an error of not greater than ± [∓] five percent.

(e) (No change.)

§711.406. Meter Installation Approval; Waiver of Duty to Install and Operate Meter; Approval of Alternative Measuring Method.

(a) Except as provided in subsection (d)[,] no meter or alternative measuring method[,] may be installed or modified prior to written approval given by the general manager of an application filed on a form prescribed by the Authority pursuant to §707.413 of this title (relating to Applications for Permits to Install or Modify Meter).

(b) The general manager shall approve an application to install or modify meter or alternative measuring method[,] if the general manager finds the application shows the following:

(1) the meter or alternative measuring method[,] has a certified error of not greater than ± [∓] five percent;

(2)-(7) (No change.)

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

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

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 20. COST DETERMINATION PROCESS

40 TAC §20.112

The Texas Department of Human Services (DHS) proposes an amendment to §20.112, concerning attendant compensation rate enhancement, in its Rate Analysis chapter. The purpose of the amendment is to clarify the definition of an attendant, add the Deaf Blind Multiple Disabilities Waiver program, and clarify the enrollment process. The amendment also revises the enrollment process to allow enrollments to "roll over" unchanged to the following year, unless the provider changes their enrollment status during the open enrollment period and revises the procedures for enrolling new facilities. The proposal states that a contract on vendor hold for 60 days for failure to submit an accountability report will become a nonparticipant until the report is submitted and the recoupments are made. Detail was added to the description of the calculation of the attendant compensation rate component to better describe the actual calculation. The proposal clarifies that, when a provider serves clients in both the Residential Care (RC) program and the Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) program in a single facility, the spending requirement is determined for both programs together and not separately. The proposal also clarifies the effective date for contractors who voluntarily withdraw contracts from being participants or request to reduce the enhancement levels and clarifies the group or individual status of a provider that acquires a participating contract through a contract assignment.

The Texas Health and Human Services Commission (HHSC) is simultaneously proposing a related amendment to 1 TAC §355.112 in this issue of the *Texas Register*.

Eric M. Bost, Commissioner, has determined that for the first five- year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of adoption of the proposed rules will be that providers will be given greater clarification of the definition of direct care staff; the enrollment process will be easier for those providers who do not

want to change their enrollment status; the enrollment process has been clarified; and Deaf Blind Multiple Disabilities contracts will be able to participate and receive enhanced rates. This revision will require a provider desiring to enroll as a participant under a new contract to submit an enrollment contract amendment, rather than being enrolled automatically. The proposal will remove a contract from participation and will stop paying higher participation rates if the provider is on vendor hold for more than 60 days for failure to submit an accountability report. The calculation of attendant compensation is described in greater detail under the proposed rule. The proposal clarifies for CBA AL/RC and RC providers that, when they operate both programs in one facility, the spending requirement is based on the entire facility. The proposal clarifies the effective date of a reduction in the reimbursement rate of a contractor who voluntarily withdraws a contract from participation or requests to reduce the enhancement level of a contract. Finally, the proposed rule clarifies the group or individual status of a provider that obtains a contract through a contract assignment. There will be no adverse economic effect on large, small, or micro businesses, because the proposal is a clarification of administrative practices. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Alisa Jacquet at (512) 438-4952 in DHS's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-120, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

§20.112. Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the Primary Home Care, including Family Care (PHC/FC); Day Activity and Health Services (DAHS); Residential Care (RC); Community Living Assistance and Support Services (CLASS) - Direct Service Agency; Community Based Alternatives (CBA) - Home and Community Support Services (HCSS); Deaf-Blind Multiple Disabilities Waiver (DBMD); Consumer-Managed Personal Assistance Services (CMPAS) and CBA - Assisted Living/Residential Care (AL/RC) programs are eligible to participate in the attendant compensation rate enhancement.

(b) Definition of attendant. An attendant is the unlicensed caregiver providing direct assistance to the clients with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) (No change.)

(2) Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attendant supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, and laundry and housekeeping staff. In the case of PHC/FC, CLASS, CBA HCSS, and DBMD staff other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(3) (No change.)

(4) An attendant also includes medication aides in the RC and AL/RC program.

(c) Attendant compensation cost center. This cost center will include employee compensation, contract labor costs, and personal vehicle mileage reimbursement for attendants as defined in subsection (b) of this section.

(1) Attendant compensation is the allowable compensation for attendants defined in §20.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs [~~Compensation of Employees~~]) and required to be reported as either salaries and/or wages, including payroll taxes and workers' compensation, or employee benefits. Benefits required by §20.103(b)(1)(A)(iii) of this title (relating to Specifications for Allowable and Unallowable Costs) to be reported as costs applicable to specific cost report line items, except as noted in paragraph (3) of this subsection, are not to be included in this cost center.

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

(d) (No change.)

(e) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined. The Texas Department of Human Services (DHS) may conduct additional enrollment periods during a rate year.

(f) Enrollment contract amendment. An initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. [~~All contracted providers must submit an enrollment contract amendment during the open enrollment period.~~] On the initial enrollment contract amendment the provider must specify for each contract a [~~his~~] desire to participate or the desire [~~his desire~~] not to participate. The participating provider must specify for each program [~~if he wishes~~] to have all participating contracts be considered as a group or as individuals [~~individually~~] for purposes related to the attendant compensation rate enhancement. For the PHC/FC program, the participating provider must also specify if he wishes to have either priority 1, nonpriority, or both priority 1 and nonpriority services participating in the attendant compensation rate enhancement. If the PHC/FC provider selects to have their contracts participating as a group, then the provider must select to have either priority 1, nonpriority, or both priority 1 and nonpriority services participate for the entire group of contracts. For providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs. After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level; a provider whose participating contracts are being considered as a group can request to have them considered as individuals; and a provider whose participating contracts are being considered as individuals can request to have them considered as a group. Requests to modify a provider's enrollment status during an open enrollment period must be received by DHS's Rate Analysis Department by the

last day of the open enrollment period as per subsection (e) of this section. Providers from which DHS's Rate Analysis Department has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation and group or individual status in effect during the open enrollment period within available funds. To be acceptable, an enrollment contract amendment must be completed according to DHS instructions, signed by an authorized signatory as per the DHS Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and legible. [~~The provider also must submit with the contract amendment all required documentation to the DHS in a manner specified by DHS. Any provider failing to submit an acceptable enrollment contract amendment by the end of the open enrollment period will be a nonparticipating contract for the entire rate year following the open enrollment period.~~]

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract delivering its first day of service to a DHS client on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to DHS instructions, signed by an authorized signator as per the Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and received by DHS's Rate Analysis Department within 30 days of DHS's mailing of notification to the provider that such an enrollment contract amendment must be submitted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (m) until: [~~New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract delivering its first day of service to a DHS client on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment are not considered new contracts. New contractors must complete the enrollment contract amendment specified in subsection (f) of this section within 30 days of notification by DHS. Any provider failing to submit an acceptable enrollment contract amendment within 30 days of notification by DHS will be a nonparticipating contract for the remainder of the rate year. New contracts will receive the attendant compensation rate as specified in subsection (l) of this section until:~~]

(1) for new contractors specifying the desire not to participate on an acceptable enrollment contract amendment, the attendant compensation rate component is as specified in subsection (m) of this section. [~~based on the enrollment contract amendment information received, participating contracts will have their attendant compensation rate adjusted effective on the first day of the month following receipt of an acceptable enrollment contract amendment.~~]

(2) for new contractors specifying the desire to participate on an acceptable enrollment contract amendment the [~~based on the enrollment contract amendment information received, nonparticipating contracts will have their~~] attendant compensation rate component is adjusted as specified in subsections (l) and (n) [~~subsection (m)~~] of this section retroactive to the first day of their contract.

(3) for new contracts from which an acceptable enrollment contract amendment is not received, the attendant compensation rate component is as specified in subsection (m) of this section.

(h) Attendant Compensation Report submittal requirements. Attendant Compensation Reports must be submitted by participating contracted providers as follows.

(1) Annual report. Participating contracted providers will provide DHS, in a method specified by DHS, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all participating contracts within one program of the provider. The aggregate report must include contracts that are new, excluded from participation, voluntary withdrawal from participation, and contract assignments, as defined in subparagraphs (B)-(E) of this paragraph, which were part of the group for any portion of the rate year. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. [~~The aggregate report must include excluded from participation, new, and contract assignment contracts (for the legal entity accepting the contract assignment), as defined in subparagraphs (A)-(E) of this paragraph, which were part of the group for any portion of the rate year. A participating contract which has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w)(3) of this section will be considered to have participated on an individual basis for compliance with reporting requirements.~~] This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by DHS. Contracted providers participating for less than a full year must provide Attendant Compensation Reports as follows.

(A) (No change.)

(B) In cases where a participating provider changes ownership through a contract assignment [~~from one legal entity to another legal entity~~], the owner prior to the change of ownership must submit an Attendant Compensation Report, covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by DHS. The owner after the change of ownership must submit an Attendant Compensation report within 60 days of the end of the rate year, covering the period from the effective date of the contract assignment as determined by DHS to the end of the rate year. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C)-(D) (No change.)

(E) A participating provider who is a new contractor as per subsection (g) of this section must submit an Attendant Compensation Report within 60 days of the end of the rate year, covering the period from the [~~sixty-~~]first day of the month following receipt by DHS's Rate Analysis Department of an acceptable enrollment contract amendment as per paragraph (g)(1) of this section [~~contract as determined by DHS~~] through the end of the rate year.

(2) Six-month report. Within 60 days of the end of the first six months of the rate year, participating [~~Participating~~] contracted providers will provide DHS, in a method specified by DHS, a six-month Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of February of the rate year. [~~DHS will place on vendor hold contracted providers failing to submit an acceptable six-month Attendant Compensation Report within 60 days of the last~~

day of February of the rate year until DHS receives and processes an acceptable report.] The report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all participating contracts within one program of the provider. Participating providers will use this six- month report to assist them in determining their level of compliance with the spending requirements and to take any appropriate action necessary to come into compliance with the spending requirements. The provider is responsible for the management of attendant compensation expenditures in compliance with the spending requirements stated in subsection (s) of this section.

(3) (No change.)

(4) Vendor hold. DHS will place on hold the vendor payments for any contractor who does not submit an Attendant Compensation Report completed in accordance with all applicable rules and instructions by the due dates described in this subsection. This vendor hold will remain in effect until an acceptable Attendant Compensation Report is received by DHS. Participating contractors who do not submit an annual Attendant Compensation Report completed in accordance with all applicable rules and instructions within 60 days of the vendor hold being placed will become nonparticipants until the first day of the month after all of the following conditions are met:

(A) the provider submits an acceptable annual Attendant Compensation Report;

(B) the provider submits a separate Attendant Compensation Report from the beginning of the current rate year to the date they were disenrolled as a participant;

(C) the provider repays to DHS funds that are identified for recoupment from subsection (s) of this section; and

(D) DHS receives, in writing by certified mail, a request from the provider to be restored to the participant status.

(i)-(j) (No change.)

(k) Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to DHS a signed enrollment contract amendment as described in subsection (f) of this section, before the end of the enrollment period. Participation is determined separately for each program specified in subsection (a) of this section except that for providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs. For PHC/FC participation is also determined separately for priority 1 and nonpriority services. Participation will remain in effect, subject to availability of funds, until the provider notifies DHS, in accordance with subsection (x) of this section, that it no longer wishes to participate or until DHS excludes the contract from participation for reasons outlined in subsection (u) of this section. Contracts voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by DHS. Contracts excluded from participation will have their participation end effective on the date determined by DHS.

(l) Determination of attendant compensation rate component for participating contracts. For each of the programs identified in subsection (a) of this section attendant compensation rate enhancement increments associated with each enhanced attendant compensation level will be determined for participating contracts from subsection (k) of this section. The attendant compensation rate enhancement increments will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement increments will be determined on a per-unit-of-service basis applicable to each program or service. [Determination of attendant compensation rate component participating contracts. For each of the programs identified in subsection (a) of this section DHS will calculate an attendant compensation rate component from subsection (k) of this section and for the first 60 days of a new contract from subsection (g) of this section as follows.]

[(1) Determine for each contract included in the cost report data base used in the determination of rates in effect on September 1, 1999, the attendant compensation cost center from subsection (c) of this section.]

[(2) Adjust the cost center data from paragraph (1) of this subsection, as specified in §20.108 of this title (relating to Determination of Inflation Indices), to inflate the costs to the prospective rate year.]

[(3) For each contract included in the cost report data base used in the determination of rates in effect on September 1, 1999, divide the result from paragraph (2) of this subsection by the units of service and multiply the result by 1.044 for all programs in subsection (a) of this section except for RC and AL/RC which are multiplied by 1.07. The result is the attendant compensation rate component for participating contracts and the first 60 days of new contracts.]

[(4) The cost base from paragraph (1) of this subsection used in determining the attendant compensation rate component will not change over time, except for adjustments for inflation from paragraph (2) of this subsection. DHS may recommend adjustments to the rates in accordance with §20.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).]

(m) Determination of attendant compensation rate component for nonparticipating contracts. For each of the programs identified in subsection (a) of this section DHS will calculate an attendant compensation rate component for nonparticipating contracts as follows.

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

(3) For each contract included in the cost report data base used in determination of rates in effect on September 1, 1999, divide the result from paragraph (2) of this subsection by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS the median cost per unit of service is selected. For all other programs the units of service are summed until the median hour of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied [and multiply the result] by 1.044 for all programs in subsection (a) of this section except for RC and AL/RC which is multiplied by 1.07. The result is the attendant compensation rate component for nonparticipating contracts.

(4) (No change.)

(n)-(r) (No change.)

(s) Spending requirements for participating contracts. DHS will determine from the Attendant Compensation Report, as specified in subsection (h) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The providers' compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report for each participating contract if the provider requested participation individually for each contract. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w)[(3)] of this section

will be considered to have participated on an individual basis for compliance with the spending requirement for the owner prior to the termination or contract assignment. If the provider specified that he wished to have all participating contracts be considered as a group for purposes related to the attendant compensation rate enhancement, as specified in subsection (f) of this section, compliance with the spending requirement is based on the total attendant compensation as reported on the single aggregate attendant compensation report described in subsection (h) of this section. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering services to both RC and CBA AL/RC clients in the same facility whose compliance is determined by combining both programs. DHS will calculate recoupment, if any, as follows.

(1) (No change.)

(2) The adjusted attendant compensation per unit of service from paragraph (1) of this subsection will be subtracted from the accrued attendant compensation revenue per unit of service to determine the amount to be recouped by DHS. If the adjusted attendant compensation per unit of service is greater than or equal to the accrued attendant compensation revenue per unit of service, there is no recoupment.

(3) (No change.)

(t)-(v) (No change.)

(w) Contract assignments. The following applies to contract assignments.

(1) Contracts participating under the prior legal entity will continue participation under the legal entity accepting the contract assignment. When the provider or legal entity accepting the contract assignment has their contracts participating as individuals, participation in the attendant compensation rate enhancement confers to the provider or legal entity accepting the contract assignment. When the provider or legal entity accepting the contract assignment has their contracts participating as a group, the contract will participate with the group of the legal entity accepting the contract assignment for purposes related to the attendant compensation rate enhancement. When the new owner has no contracts participating, the individual or group status of participating contracts under the old owner will transfer to the new owner.

[(2) When the contract assignment is a change only in the organizational structure or name of the legal entity, the provider or legal entity accepting the contract assignment is responsible for the reporting requirements in subsection (h) of this section and for any recoupment amount owed to DHS for the entire rate year identified, even if part of the rate year was under the responsibility of the previous legal entity.]

(2) [(3)] When the contract assignment is an ownership change from one legal entity to a different legal entity, DHS will place a vendor hold on the payments of the existing contracted provider until DHS receives an acceptable Attendant Compensation Report specified in subsection (h)(1)(B) of this section and until funds identified for recoupment from subsection (s) of this section are repaid to DHS. DHS will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid by the existing contracted provider's vendor payments that are being held, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to DHS. Failure to repay the amount due [or submit an acceptable payment plan] within 60 days of notification will result in placement of a vendor hold on all DHS contracts controlled by the responsible entity and will bar the responsible entity from enacting new contracts with DHS until repayment is made in full.

(x) Voluntary withdrawal. Participating contracts wishing to withdraw from the attendant compensation rate enhancement must notify DHS in writing by certified mail. The requests will be effective the first of the month following the receipt of the request. Contracts voluntarily withdrawing must remain nonparticipants for the remainder of the rate year [and are excluded from participation the following rate year]. Providers whose contracts are participating as a group must request withdrawal of all the contracts in the group.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce [a reduction to] their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to DHS by certified mail. These requests will be effective the first of the month following [30 days from] the receipt of the request. Providers whose contracts are participating as a group must request the same reduction for all of the contracts in the group.

(z)-(cc) (No change.)

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

Filed with the Office of the Secretary of State, on May 3, 2001.

TRD-200102530
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 438-3108

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PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

The Veterans Land Board of the State of Texas (the "Board") proposes the repeal of Title 40, Part 5, Chapter 175 of the Texas Administrative Code, §175.5 (relating to Appraisal of Land) of the General Rules of the Veterans Land Board and simultaneously proposes a new §175.5 (relating to Appraisal of Land). The proposed new rule provides that property evaluations must be prepared by appraisers approved by the Board, requires that written notice be provided to the seller and the Board when the loan applicant cancels a transaction because of the appraisal, deletes the mandatory requirement that the Board's representative meet a loan applicant on the property to be purchased, permits the applicant to require the appraiser to inspect the property with the applicant, allows the Board to adopt resolutions that establish procedures relating to inspection of property by the loan applicant or the applicant's representative, establishes procedures for requesting re-appraisals, and allows the chairman or executive secretary to waive requirements related to re-appraisals.

The existing rule requires the loan applicant to meet with the Board's appraiser on the property to be purchased. This often introduces unavoidable delays in processing loan applications caused by difficulties in matching the schedule of the loan applicant with the schedule of the appraiser. The proposed new rule requires the loan applicant to personally inspect the land to be

purchased, but deletes the requirement that the applicant meet with a representative of the Board. The applicant may require the appraiser to meet the applicant on the tract. Under the proposed new rule, the only instance in which the Board may require the applicant to meet with its representative is in the event of a re-appraisal.

In addition to time delays, in many instances the loan applicant does not live in close proximity to the land being purchased. In such instances, the applicant must miss work and bear the expense of traveling to meet the appraiser on the property.

The Board expects to reduce the time needed to approve loan applications by eliminating the requirement that every loan applicant schedule an appointment to personally meet with the appraiser to inspect the property. The proposed new rule protects the best interests of the Veterans Land Program by describing procedures for personal inspections by the loan applicant, including the requirements for requesting a re-appraisal.

Larry Soward, Chief Clerk of the General Land Office, has determined that for each year of the first five years the proposed repeal and proposed new section are in effect, there will be no negative fiscal implications to state or local government as a result of enforcing or administering the sections.

Larry Soward, Chief Clerk of the General Land Office, has determined that for each year of the first five years the new section as proposed will be in effect, the public will benefit from: (1) a reduction in the amount of time needed to process loan applications, and (2) avoiding the expense of travel and missing work to meet with an appraiser.

Mr. Soward has determined that the proposed repeal and proposed new rule will have no effect on small businesses during each year of the first five years the sections are in effect.

Mr. Soward has also determined that during each year of the first five years the proposed repeal and proposed new rule are in effect, there is no anticipated economic cost to any persons who are required to comply with the sections.

Comments may be submitted to Melinda Tracy, Legal Services, General Land Office of the State of Texas, 1700 N. Congress Avenue, Austin, Texas 78701.

40 TAC §175.5

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

The repeal of this section is proposed under the Natural Resources Code, Title 7, Chapter 161, §161.063 and §161.284, which provides authorization for the Board to adopt rules for the Program which it considers necessary and advisable and to adopt rules relating to appraisals.

Natural Resources Code §161.212 and §161.284 are affected by this proposed action.

§175.5. Appraisal of Land.

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

Filed with the Office of the Secretary of State, on May 7, 2001.

TRD-200102562

Larry R. Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 305-9129

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40 TAC §175.5

The new section is proposed under the Natural Resources Code, Title 7, Chapter 161, §161.063 and §161.284, which provides authorization for the Board to adopt rules for the Program which it considers necessary and advisable and to adopt rules relating to appraisals.

Natural Resources Code §161.212 and §161.284 are affected by this proposed action.

§175.5. Appraisal of Land.

(a) Before property is purchased it shall be appraised for the board by an appraiser approved by the board. The exclusive purpose of the appraisal is to assist the board in determining that its investment will be sufficiently secured. Any improvement existing on the land may be considered by the board in making the appraisal. If improvements are considered in determining the value of the property, the board may in accordance with §175.6(c) of this title (relating to Commitment by the Board) require the purchase of an insurance policy covering fire and hazard losses.

(b) If the appraisal amount is less than the purchase price agreed upon, the veteran may cancel the transaction. The veteran must provide a written cancellation notice to the seller and the board and request that the board return the down payment and the unused portion of the fee deposits.

(c) Upon the request of the veteran, the appraiser shall meet with the veteran for a physical inspection of the land to be purchased. Except as provided in subsection (d) of this section, the board may not require that veterans accompany the appraiser. The Board may, by resolution, establish a procedure for veterans to certify they have personally inspected the tracts they are purchasing. This resolution may also provide a procedure for granting a request to permit the veteran's personal representative to inspect the tract for the veteran.

(d) If the veteran believes that the appraisal contains a mistake, the veteran may request that the land be appraised again. The board shall have the land re-appraised if all the following requirements are satisfied:

(1) The request for a re-appraisal must be in writing and describe any mistake the veteran believes was made.

(2) The written request should be accompanied by any documentation supporting the allegation that a mistake was made.

(3) The re-appraisal fee must be remitted to the board.

(4) If the board elects to perform another physical inspection of the tract in connection with the re-appraisal, the board may require that the veteran personally accompany the board's representative on that inspection.

(e) The chairman, or executive secretary, of the board may waive any of the requirements of subsection (d) of this section. The board shall be the sole and final judge regarding any matter associated with the appraisal of the land to be purchased, and the amount of the loan offered to any veteran.

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

Filed with the Office of the Secretary of State, on May 7, 2001.

TRD-200102561
Larry R. Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 305-9129

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40 TAC §175.20

The Veterans Land Board of the State of Texas (the "Board") proposes amendments to Title 40, Part 5, Chapter 175 of the Texas Administrative Code, §175.20 (relating to Delinquencies and Forfeiture Procedures) of the General Rules of the Veterans Land Board. These amendments would change the term "penalty interest" to "delinquent interest," change the term "reinstatement fee" to "reinstatement penalty," define the term "reinstatement penalty," allow the Board to restore the eligibility of a person to participate in the Board's loan programs, allow the Board Chairman to restore in certain instances the eligibility of a person to participate in the Board's loan programs, provide for a usury savings clause, and provide that Board land contracts are subject to the constitution, statutes, and Board rules as they may from time to time be amended.

In the proposed amendments, the term "penalty interest" is being changed to "delinquent interest" because the term "delinquent interest" more accurately describes the interest charged as a result of delinquent payments.

The dollar amount of a "reinstatement fee" is specified in §175.17 (relating to Fees and Deposits), but that rule is currently being proposed for repeal and was published in the April 27, 2001, edition of the *Texas Register* (26 TexReg 3200), and the simultaneously proposed new §175.17 that will be substituted therefor will not provide for a "reinstatement fee." The term in the proposed amendment to §175.20 is changed to "reinstatement penalty" and is redefined to provide for a penalty amount based on a percentage calculation and is intended to discourage contract forfeitures.

Under current §175.2 (d) (relating to Loan Eligibility Requirements), a person may have only one land loan at a time as a veteran and that loan must be paid in full before he or she may apply for an additional land loan as a veteran. If a person's loan has been forfeited and ordered for sale (and therefore not paid in full), the person would not be eligible to apply for another loan. The proposed amendment to §175.20 (f) (1) would allow the Board to restore the eligibility of a person to participate in the Board's loan programs, notwithstanding §175.2, if that person is able to justify to the Board the circumstances that led to the previous forfeiture and order for sale and that person fulfills the conditions established by the Board for the reinstatement of the eligibility. The proposed amendments to §175.20 (f) (2) and (3) would in certain specified instances allow the Board Chairman, without further approval by the Board, to restore the eligibility of a person to participate in the Board's loan programs. Allowing the Board Chairman to restore the eligibility in these specified instances will provide the Board more time to devote to other Board matters and will allow for a more expeditious restoration of eligibility in the specified instances.

While the Board does not intend to ever charge usurious interest, the proposed amendment to §175.20 (g) to provide for a usury savings clause is to help protect the Board from the negative consequences of any unintended usurious charge.

Board contracts generally refer to the laws and rules of the Board. The proposed amendment to §175.20 (h) to provide that all board contracts are subject to the laws and rules that govern the Board as such laws and rules may from time to time be amended is intended to make Board contracts (at least those entered into on or after the effective date of this proposed amendment) subject to future statutory and rule changes without the need for contract amendments.

The proposed amendments are in the best interest of the Program for the reasons stated above.

Larry Soward, Chief Clerk of the General Land Office, has determined that for each year of the first five years the section as amended is in effect, there will be no negative fiscal implications to state or local government as a result of enforcing or administering the section.

Larry Soward, Chief Clerk of the General Land Office, has determined that for each year of the first five years the section as proposed will be in effect, the public will benefit because the rules will discourage repeated forfeitures and orders for sale, thereby encouraging more efficient loan servicing operations and recouping the costs for time spent on such matters from those who cause the inefficiencies.

Mr. Soward has determined that the proposed amendments will have no effect on small businesses during each year of the first five years the section is in effect.

Mr. Soward has also determined that during each year of the first five years the proposed amendments are in effect, the anticipated economic costs to persons who are required to comply with the section will be minimal, since the deterrent effect of higher penalties will reduce the actual number of recurring forfeitures. In addition, the penalty imposed for a first or second forfeiture are less than that charged under the currently proposed new §175.17, but the penalty for a third or subsequent forfeiture are much higher.

Comments may be submitted to Melinda Tracy, Legal Services, General Land Office of the State of Texas, 1700 N. Congress Avenue, Austin, Texas 78701.

The amendments to the section are proposed under the Natural Resources Code, Title 7, Chapter 161, §§161.061, 161.063, 161.236, 161.317, and 161.320, which authorize the Board to adopt rules for the Program that it considers necessary and advisable, to determine the number of tracts of land that a veteran may purchase, to impose a reinstatement penalty, and to collect interest on delinquent payments.

Natural Resources Code §§161.236, 161.317, and 161.320 are affected by this proposed action.

§175.20. Delinquencies and Forfeiture Procedures.

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

(1) Account--The loan account a borrower holds with the Veterans Land Board. The account includes the obligations between the borrower and the board as evidenced by contracts and documents in the borrower's loan file as well as the accounting records of the board. This includes the amount of the unpaid principal balance of the loan, any administrative costs made a part of the loan, unpaid interest, and any delinquent amount.

(2) Borrower--The person presently obligated to make the loan installment payments set forth in the contract, including the purchaser at a forfeited land sale or the last board-approved assignee of the original veteran purchaser.

(3) Contract--The contract of sale and purchase between the board and a borrower.

(4) Current--The account is in good standing with no installments past due.

(5) Delinquent amount--The total amount needed to bring an account current. This includes all past due installments, administrative costs made part of such past due installments, and all accrued delinquent[~~penalty~~] interest on all such past due installments. Delinquent[~~Penalty~~] interest shall accrue on any delinquent amount beginning with the fifth (5th) day after the due date and continuing until the date payment of the entire delinquent amount is received. It does not include the reinstatement penalty[~~fee~~].

(6) Forfeiture--The action by which the board declares a borrower to be in breach of his or her contract by virtue of failing to perform a material term of the contract, including, but not limited to, timely payment of the loan installments.

(7) Installment--The amount of the periodic loan payment specified by the contract.

(8) Partial Payment Agreement--A borrower's written agreement to clear the delinquent amount on or before a designated date by making payments in addition to the installment amount on scheduled dates as described in the agreement.

(9) Delinquent[~~Penalty~~] interest--The interest which accrues on a loan installment which has become delinquent. The delinquent[~~penalty~~] interest rate is 1.5 percentage points greater than the interest rate on the loan.

(10) Reinstatement penalty[~~fee~~]--The amount charged to a borrower (whose contract has been forfeited by the board) in order to reinstate the contract. [~~The reinstatement fee covers the costs of notifying the borrower of delinquencies, forfeiture and forfeiture procedures and all other costs of processing the reinstatement of a forfeited contract.~~] The reinstatement penalty[~~fee~~] is in addition to the amount necessary to bring the account current.

(A) Beginning on the date of the first and any second forfeiture of the contract, each unpaid delinquent installment (of principal and interest combined) will accrue a reinstatement penalty in an amount equal to 1.5 percent per month (or 18 percent per year), until the contract is reinstated.

(B) Beginning on the date of the third instance and any subsequent forfeiture of the contract, the outstanding principal balance of the contract will accrue a reinstatement penalty in an amount equal to 1.5 percent per month (or 18 percent per year), less the accrued delinquent interest, until the contract is reinstated.

(11) Sale order date--The date on which the board meets to order a tract advertised for sale, or for lease for mineral development.

(b) Delinquencies.

(1) If a scheduled loan installment is not received by the board within four (4) days of the due date stated in the contract, the account becomes delinquent. Any payments received on an account shall be first applied to the delinquent amount. The account continues in a delinquent status until the full amount of the delinquent amount has been received by the board.

(2) A partial payment agreement may be granted at the discretion of the chairman at any time prior to the date an account is forfeited. From time to time, the board may, by resolution, set guidelines for other conditions under which partial payment agreements may be approved.

(c) Forfeiture.

(1) The board is the sole judge whether any contract has been forfeited. An account shall become eligible for forfeiture if:

(A) it remains in a delinquent status for 30 or more consecutive days; or,

(B) the contract has been transferred without obtaining the board's permission; or,

(C) property taxes for all prior years shall not have been paid by May 1 of any year; or,

(D) the provisions of the Natural Resources Code, Chapter 161, the terms of the contract, or the rules of the board are not satisfied.

(2) The board must give 30 days written notice to the borrower, the original veteran purchaser (if different from the borrower) and all board approved assignees of the original veteran purchaser, if any, and must specify the reason why the contract is subject to forfeiture. This notice will be sent by certified mail to the last known address of these parties. If the reason for forfeiture is cured or corrected within 30 days the board shall not declare a forfeiture.

(3) The liability of the original veteran purchaser and any subsequent assignee or assignees is joint and several, but the original veteran purchaser is primarily liable for payment of the money under the contract.

(4) A forfeiture shall be effective at the same time the board meets and adopts a resolution forfeiting the contract. At that time, the land and all payments previously made are forfeited.

(5) When the forfeiture is effective, the full title to the land shall revest in the board. Any interest in the mineral estate which the board acquired at purchase shall likewise revest in the board. The board shall recognize, and continue in force and effect, any outstanding valid oil, gas, or mineral lease and collect all rentals, royalties, or other amounts payable under the lease. The board may also lease the land on terms it considers proper. The proceeds received from a lease on a forfeited tract shall be credited to the Veterans Land Fund; however, the chairman is authorized to credit any portion of the lease proceeds to the delinquent amount and unpaid principal of a loan as part of a borrower's attempt to reinstate his or her contract.

(d) Reinstatement.

(1) From time to time, the board by resolution may set additional guidelines and reasonable requirements which must be satisfied before reinstatement may be granted (e.g., evidence that there are no delinquent taxes due as of the date and time of reinstatement, etc.).

(2) The borrower, the original veteran purchaser (if different from the borrower) , and all board approved assignees may reinstate the contract at any time before the sale order date if the reason for forfeiture was failure to keep the account current. If the contract was

forfeited for any other reason, the board in its discretion may determine there is no right to reinstate the contract.

(A) Any person wishing to exercise a right of reinstatement shall submit to the board payment of the delinquent amount, the reinstatement penalty[~~fee~~] and other costs incident to the reinstatement as prescribed by the board.

(i) If there is only one person who has a right to reinstate a contract (there having been no board approved assignments of the contract), the chairman of the board may in his or her discretion reinstate the contract immediately upon receipt of payment of the delinquent amount, the reinstatement penalty[~~fee~~] and other costs prescribed by the board.

(ii) If more than one person appears to have a right to reinstate the same contract, reinstatement shall not be granted prior to the time the board meets on the sale order date. In this event, all persons wishing to reinstate the same contract are required to submit to the board payment of the delinquent amount, reinstatement penalty[~~fee~~] and other costs prescribed by the board. Any person failing to satisfy this requirement by the sale order date may, in the board's discretion, be deemed to have failed to exercise his or her right to reinstate the contract. Any monies and documents submitted by such persons shall be returned. If there are still two or more persons who satisfy the requirement to reinstate the same contract, the board shall decide, in its discretion, who may reinstate. Such determinations shall be made on a case by case basis.

(B) A person who desires to reinstate a contract but is unable to submit full payment of the delinquent amount before the anticipated sale order date, may petition the chairman to postpone the sale order date for the tract. The chairman in his or her sole discretion may grant or deny such a petition.

(i) In granting such a petition, the chairman may set reasonable conditions which must be satisfied by a stated deadline. Such conditions may include, but are not limited to, the requirement that the requesting party enter into a partial payment agreement.

(ii) If the requesting party satisfies all conditions set by the chairman by the stated deadline, the account shall be reinstated.

(iii) If the requesting party fails to satisfy all conditions set by the chairman by the stated deadline, the sale order date for the tract may be reset. If the requesting party thereafter fails to pay the delinquent amount in full prior to the sale order date, all monies paid under the partial payment agreement shall be forfeited to the board.

(3) Any person failing to make a timely submission shall lose his or her right of reinstatement.

(4) The right to reinstate a contract is extinguished when the tract has been ordered advertised for sale (or for lease for mineral development). However, the borrower, the original veteran purchaser (if different from the borrower), or any board approved assignee may petition the board to permit reinstatement.

(A) The board, in its discretion, may reinstate the contract under conditions it deems appropriate, including, but not limited to, requiring that the account be paid in full simultaneously with the reinstatement.

(B) Stay of Sale.

(i) The board, in its discretion, may stay (postpone) sale of the tract. The board may set conditions which must be satisfied before reinstatement will be permitted. The chairman is authorized by the board to make a written agreement with the party seeking reinstatement setting forth all conditions for reinstatement, including a date by which each condition must be satisfied. The conditions may include, but are not limited to, the following: payment of the delinquent amount, payment of the reinstatement penalty[~~fee~~] (including costs incident to the reinstatement), and submission of tax certificates evidencing that there are no delinquent taxes on the land. When the board determines that all conditions set forth in the agreement have been satisfied, it shall reinstate the contract. Until the board's conditions have been satisfied, the contract will remain in a forfeited status, but the sale of the tract shall be stayed.

(ii) The stay may be revoked at any time by the board if the borrower fails to satisfy any of the conditions set forth in the agreement.

(iii) The board shall be the sole judge of whether the conditions of the agreement have been satisfied.

(5) The board expressly authorizes the chairman to reinstate any account at any time prior to receipt of full payment of the delinquent amount if he or she deems it to be in the best interest of the Veterans Land Program.

(e) Re-amortization.

(1) The chairman, in his or her discretion, may permit a borrower to re-amortize his or her loan to incorporate all or part of the delinquent amount into the unpaid balance.

(2) A re-amortization shall be granted only on the condition that the borrower's loan has not been previously re-amortized.

(3) The chairman's consent to re-amortize shall state the new balance and the term over which it is to be re-amortized.

(f) Restoring Eligibility to Participate after Order for Sale.

(1) A person who is ineligible to participate in loan programs because of a past forfeiture and order for sale, may make a written request to the board for a restoration of the person's eligibility. The request must detail the circumstances which led to the prior forfeiture and order for sale and justify such request. If granted, the requestor must fulfill any conditions that the board, in its sole discretion and notwithstanding any other provisions of this chapter, establishes or determines are necessary to restore such eligibility.

(2) Notwithstanding any other provisions of this chapter, the board authorizes the chairman to restore a person's eligibility to participate in board loan programs, as a veteran or non-veteran as the case may be, without further board action if the person requesting the restoration of eligibility:

(A) was not the account holder at the time the account was forfeited and ordered for sale, because the board had earlier approved a transfer of the account to a new account holder and the account was current at the time of transfer; or

(B) was the account holder at the time of forfeiture and order for sale and:

(i) the board has sold the property that was the subject of the forfeited account; and

(ii) the person requesting the restoration of eligibility pays to the board the unpaid interest, including delinquent interest, and reinstatement penalty that had accrued on the forfeited account as of the date the account was ordered for sale.

(g) Savings clause. Interest charged and collected on any contract will not exceed the maximum rate or amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under any law. Any interest in excess of that maximum amount will be credited on the principal amount of the contract or, if the principal

amount has been paid, refunded to the borrower. On any acceleration or required or permitted prepayment any excess interest will be canceled automatically as of the acceleration or prepayment or, if the excess interest has already been paid, credited on the principal amount or, if the principal amount has been paid, refunded to the borrower. This subsection shall prevail over other provisions in this chapter and any instruments concerning the debt.

(h) All contracts are subject to the provisions of the constitution, statutes, and rules governing the board, as such constitution, statutes, and rules may from time to time be amended.

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

Filed with the Office of the Secretary of State, on May 7, 2001.

TRD-200102563
Larry R. Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Earliest possible date of adoption: June 17, 2001
For further information, please call: (512) 305-9129

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WITHDRAWN RULES

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

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.476

The Public Utility Commission of Texas has withdrawn from consideration the proposed new §25.476 which appeared in the February 2, 2001, issue of the *Texas Register* (26 TexReg 1051).

Filed with the Office of the Secretary of State on May 1, 2001

TRD-200102471
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 1, 2001
For further information, please call: (512) 936-7308

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT-SPECIFIC SUBSTANTIVE RULES

22 TAC §203.10

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Funeral Service Commission has been automatically withdrawn. The new section as proposed appeared in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10868).

Filed with the Office of the Secretary of State on May 7, 2001.

TRD-200102555

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.113

The Health and Human Services Commission adopts new §355.113, concerning the reimbursement methodology for Developmental Rehabilitation Services for Children with Disabilities or Developmental Delays, without changes from the proposed text as published in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10846).

The purpose of the rule is to establish the reimbursement methodology for Developmental Rehabilitation Services (DRS) providers to deliver developmentally appropriate individualized skills training and support to foster, promote, and enhance child engagement in daily activities, functional independence, and social interaction.

In conjunction with the new section, Texas Interagency Council on Early Childhood Intervention (ECI) is simultaneously adopting new §§621.151 - 621.153 concerning the General Provisions for Developmental Rehabilitation Services for Children with Disabilities or Developmental Delays, elsewhere in this issue of the *Texas Register*.

No comments were received on the proposed rule.

The new section is adopted under Chapter 73 of the Human Resources Code, §73.0051 and §73.022, which provides the agency with the authority to administer public programs for developmentally delayed children.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 2001.

TRD-200102532

Don Green
Chief Financial Officer
Texas Health and Human Services Commission
Effective date: May 23, 2001
Proposal publication date: November 3, 2000
For further information, please call: (512) 424-6526

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 301. DEFINITIONS

16 TAC §301.1

The Texas Racing Commission adopts an amendment to §301.1, relating to definitions without changes to the proposed text as published in the March 16, 2001, issue of *Texas Register* (26 TexReg 2097) and will not be republished. The amendment deletes the definition of the term "declaration". This term has become obsolete in the racing industry. The amendment also capitalizes the word "commission" and changes the phrase "rules of the commission" to "the Rules" to conform to current rule style. The amendment reflects the agency's continued effort to keep its rules relevant and in conformity with industry terminology.

No comments were received regarding the adoption of this amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse or greyhound racing;§6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse races; and §11.011, which authorizes the Commission to adopt rules to implement pari-mutuel wagering on simulcasting races.

The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2001.

TRD-200102521

Judith L. Kennison
General Counsel
Texas Racing Commission
Effective date: June 1, 2001
Proposal publication date: March 16, 2001
For further information, please call: (512) 833-6699

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CHAPTER 309. RACETRACK LICENSES AND OPERATIONS
SUBCHAPTER C. HORSE RACETRACKS
DIVISION 1. RACETRACKS

16 TAC §309.214

The Texas Racing Commission adopts an amendment to §309.214 relating to distance markers around horse racetracks without changes to the proposed text as published in the March 16, 2001, issue of *Texas Register* (26 TexReg 2100) and will not be republished. The amendment clarifies the demarcation of distances around a horse racetrack. These distances are to be measured in either miles, fractions of miles, or yards, not poles.

No comments were received regarding the adoption of this amendment.

The amendment is adopted the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to regulate every race meeting in this state involving wagering on the result of greyhound or horse racing; §3.021 which authorizes the Commission to regulate all aspects of greyhound and horse racing in the State; and §6.06 which authorizes the Commission to adopt rules relating to all aspects of pari-mutuel tracks.

The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2001.

TRD-200102522
Judith L. Kennison
General Counsel
Texas Racing Commission
Effective date: June 1, 2001
Proposal publication date: March 16, 2001
For further information, please call: (512) 833-6699

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CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.5

The Texas Racing Commission adopts an amendment to §311.5, relating to license fees without changes to the proposed text as published in the March 16, 2001, issue of *Texas Register* (26 TexReg 2101) and will not be republished. The amendment permits licensees the option of making payment by use of a credit card for fees and fines. This amendment will provide an added convenience to the licensees.

No comments were received regarding the adoption of this amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §7.02, which authorizes the Commission to establish categories of occupational licenses and the qualifications and experience required for licensing in each category.

The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2001.

TRD-200102523
Judith L. Kennison
General Counsel
Texas Racing Commission
Effective date: June 1, 2001
Proposal publication date: March 16, 2001
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER D. STANDARDS OF CONDUCT

19 TAC §§1.60 - 1.67

The Texas Higher Education Coordinating Board adopts new §§1.60 - 1.67 concerning Agency Administration (Standards of Conduct) with changes to §1.64 of the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1625). §§1.60, 1.61, 1.62, 1.63, 1.65, 1.66, 1.67 are being adopted without changes and will not be republished. Specifically, these new rules govern all aspects of conduct of the Board and its employees in these relationships, including the administration and investment of funds received for the benefit of the Board, the use of an employee or property by the donor or organization, service by an officer or employee of the Board as an officer or director of the donor or organization, and monetary enrichment of an officer or employee of the agency of the donor or organization.

There were no comments received concerning the new rules, however, it was suggested that the Board may wish to authorize the Chair of the Board, instead of the Commissioner, to cooperatively appoint a board of directors for a private organization formed under §1.64. Section 1.64 has been changed to reflect that suggestion.

The new rules are adopted under Texas Education Code, §61.027, which provides the Texas Higher Education Coordinating Board the authority to adopt rules, Texas Education Code, §61.038, which authorizes the Board to accept donations, and Texas Government Code, §2255.001, which authorizes a state agency to adopt rules governing the relationship between a donor or organization, and the agency and its employees.

§1.64. Organizing a Private Organization That Exists To Further the Duties and Purposes of the Board.

(a) The Chair of the Board and the membership of a private organization covered by these sections may cooperatively appoint a board of directors for the organization. The Chair of the Board shall be a non-voting member. Board employees may hold office and vote provided there is no conflict of interest in accordance with all federal and state laws and Board policies. This provision applies to the employee's spouse and children.

(b) As an alternative to the method described in subsection (a) of this section, the private organization may decide not to have its board cooperatively appointed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2001.

TRD-200102472
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: May 21, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§13.1 - 13.3

The Texas Higher Education Coordinating Board adopts the repeal of §§13.1 - 13.3 concerning financial planning for public institutions of higher education (General Provisions) without changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1627). The rules are being repealed and new rules are being written that would simplify and streamline financial planning procedures and that would incorporate existing standards into the rules.

There were no comments received concerning the repeal of the rules.

The repeal of the rules is adopted under the Texas Education Code, §§61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (General 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 May 1, 2001.

TRD-200102482
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: May 21, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER A. DEFINITIONS

19 TAC §13.1

The Texas Higher Education Coordinating Board adopts new §13.1 concerning financial planning for public institutions of higher education (Definitions) with changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1627). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules. Specifically, the new rules will provide definitions used in Chapter 13.

There were no comments received concerning the new rules.

The new rules are adopted under Texas Education Code, §61.059b, which provides the Texas Higher Education Coordinating Board the authority to review and revise funding formulas; Texas Education Code, §61.065, which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and Texas Education Code, §51.005 and §51.0051, which provides the Coordinating Board with the authority to approve the form of reports.

§13.1. Definitions.

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

(1) Auxiliary Enterprise -- Activities providing a service to students, faculty, or staff for a fee directly related to, although not necessarily equal to, the cost of the service.

(2) Available University Fund (AUF) -- A fund established in Article 7 of the Constitution to receive all interest and earnings of the Permanent University Fund and used to pay the debt service on PUF-backed bonds.

(3) Board or Coordinating Board -- The Texas Higher Education Coordinating Board.

(4) Current Operating Funds -- Unrestricted (appropriated) funds, designated funds, restricted funds, and auxiliary enterprise funds.

(5) Functional categories -- Instruction, research, public service, academic support, student service, institutional support, operation and maintenance of plant, and hospital as defined by NACUBO.

(6) General Revenue (GR) -- State tax revenue

(7) Governmental Accounting Standards Board (GASB) -- An entity created by the Financial Accounting Foundation to set accounting standards for governmental entities including public institutions of higher education.

(8) Higher Education Assistance Fund (HEAF) -- A fund established in Article 7 of the Constitution to fund capital improvements and capital equipment for institutions not included in the Permanent University Fund.

(9) Institutional Funds -- Fees, gifts, grants, contracts, and patient revenue, not appropriated by the legislature.

(10) Local Funds -- Tuition, certain fees, and other educational general revenue appropriated by the legislature.

(11) National Association of College and University Business Officers (NACUBO) -- Provides guidance in business operations of higher education institutions.

(12) Permanent University Fund (PUF) -- A fund established in Article 7 of the Constitution to fund capital improvements and capital equipment at certain institutions of higher education.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2001.

TRD-200102473
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: May 21, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER B. FORMULA FUNDING

19 TAC §§13.20 - 13.24

The Texas Higher Education Coordinating Board adopts new §13.20 - 13.24 concerning financial planning for public institutions of higher education (Formula Funding) without changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1628). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules. Specifically, the new rules will provide guidelines for updating formula funding recommendations.

There were no comments received concerning the new rules.

The new rules are adopted under Texas Education Code, §61.059b, which provides the Texas Higher Education Coordinating Board the authority to review and revise funding formulas; Texas Education Code, §61.065, which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and Texas Education Code, §51.005 and §51.0051, which provides the Coordinating Board with the authority to approve the form of reports.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2001.

TRD-200102474
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: May 21, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER B. PROCEDURES FOR CERTIFICATION OF ADEQUACY OF FUNDING

19 TAC §§13.21 - 13.23

The Texas Higher Education Coordinating Board adopts the repeal of §§13.21 - 13.23 concerning financial planning for public institutions of higher education (Procedures for Certification of Adequacy of Funding) without changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1630). The rules are being repealed and new rules are being written that would simplify and streamline financial planning procedures and that would incorporate existing standards into the rules.

There were no comments received concerning the repeal of the rules.

The repeal of the rules is adopted under the Texas Education Code, §§ 61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (Procedures for Certification of Adequacy of Funding).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2001.

TRD-200102483
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: May 21, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER C. BUDGETS

19 TAC §§13.40 - 13.47

The Texas Higher Education Coordinating Board adopts new §§13.40 - 13.47 concerning financial planning for public institutions of higher education (Budgets) without changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1630). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules.

There were no comments received concerning the new rules.

The new rules are adopted under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2001.

TRD-200102475

Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: May 21, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER C. APPROVAL OF TUITION REVENUE BONDS AND PLEDGE

19 TAC §§13.41 - 13.47

The Texas Higher Education Coordinating Board adopts the repeal of §§13.41 - 13.47 concerning financial planning for public institutions of higher education (Approval of Tuition Revenue Bonds and Pledge) without changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1631). The rules are being repealed and new rules are being written that would simplify and streamline financial planning procedures and that would incorporate existing standards into the rules.

There were no comments received concerning the repeal of the rules.

The repeal of the rules is proposed under the Texas Education Code, §§ 61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (Approval of Tuition Revenue Bonds and Pledge).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2001.

TRD-200102484
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: May 21, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER D. FINANCIAL REPORTING

19 TAC §§13.60 - 13.62

The Texas Higher Education Coordinating Board adopts new §§13.60 - 13.62 concerning financial planning for public institutions of higher education (Financial Reporting) without changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1632). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules.

There were no comments received concerning the new rules.

The new rules are proposed under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and §51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2001.

TRD-200102476
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: May 21, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER D. PROCEDURES AND CRITERIA FOR FUNDING OF FAMILY PRACTICE RESIDENCY PROGRAMS

19 TAC §§13.61 - 13.67

The Texas Higher Education Coordinating Board adopts the repeal of §§13.61 - 13.67 concerning financial planning for public institutions of higher education (Procedures and Criteria for Funding of Family Practice Residency Programs) without changes to the proposed text as published in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1632). The rules are being repealed and new rules are being re-written that would simplify and streamline financial planning procedures and incorporate existing standards into the rules.

There were no comments received concerning the repeal of the rules.

The repeal of the rules is adopted under the Texas Education Code, §§ 61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (Procedures and Criteria for Funding of Family Practice Residency Programs).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2001.

TRD-200102485
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: May 21, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER E. TUITION REBATES FOR CERTAIN UNDERGRADUATES

19 TAC §§13.80 - 13.87

The Texas Higher Education Coordinating Board adopts new §§13.80 - 13.87 concerning financial planning for public institutions of higher education (Tuition Rebates for Certain Undergraduates) without changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1633). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules. Specifically, the new rules include minor modifications to existing rules regarding tuition rebates to make them consistent with current policies.

There were no comments received concerning the new rules.

The new rules are adopted under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2001.

TRD-200102477
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Effective date: May 21, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER E. PROCEDURES AND CRITERIA FOR FUNDING GRADUATE MEDICAL EDUCATION PROGRAMS

19 TAC §§13.81 - 13.85

The Texas Higher Education Coordinating Board adopts the repeal of §§13.81 - 13.85 concerning financial planning for public institutions of higher education (Procedures and Criteria for Funding Graduate Medical Education Programs) without changes to the proposed text as published in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1634). The rules are being repealed and new rules are being written that would simplify and streamline financial planning procedures and that would incorporate existing standards into the rules.

There were no comments received concerning the repeal of the rules.

The repeal of the rules is adopted under the Texas Education Code, §§ 61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (Procedures and Criteria for Funding Graduate Medical Education Programs).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200102486
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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Proposal publication date: February 23, 2001
For further information, please call: (512) 427-6162

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SUBCHAPTER F. TUITION REBATES FOR CERTAIN UNDERGRADUATES

19 TAC §§13.91 - 13.98

The Texas Higher Education Coordinating Board adopts the repeal of §§13.91 - 13.98 concerning financial planning for public institutions of higher education (Tuition Rebates for Certain Undergraduates) without changes to the proposed text as published in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1635). The rules are being repealed and new rules are being written that would simplify and streamline financial planning procedures and that would incorporate existing standards into the rules.

There were no comments received concerning the repeal of the rules.

The repeal of the rules is adopted under the Texas Education Code, §§ 61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (Tuition Rebates for Certain Undergraduates).

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 F. FORMULA FUNDING AND TUITION CHARGED FOR EXCESS CREDIT HOURS OF UNDERGRADUATE STUDENTS

19 TAC §§13.100 - 13.106

The Texas Higher Education Coordinating Board adopts new §§13.100 - 13.106 concerning financial planning for public institutions of higher education (Formula Funding and Tuition Charged for Excess Credit Hours of Undergraduate Students) without changes to the proposed text as published in the February 23, 2001 issue of the *Texas Register* (26 TexReg 1635). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules.

There were no comments received concerning the new rules.

The new rules are adopted under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

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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Gary Prevost
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SUBCHAPTER G. FORMULA FUNDING AND TUITION CHARGED FOR EXCESS CREDIT HOURS OF UNDERGRADUATE STUDENTS

19 TAC §§13.110 - 13.116

The Texas Higher Education Coordinating Board adopts the repeal of §§13.110 - 13.116 concerning financial planning for public institutions of higher education (Formula Funding and Tuition Charged for Excess Credit Hours of Undergraduate Students) without changes to the proposed text as published in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1637). The rules are being repealed and new rules are being written that would simplify and streamline financial planning procedures and that would incorporate existing standards into the rules.

There were no comments received concerning the repeal of the rules.

The repeal of the rules is adopted under the Texas Education Code, §§ 61.059b, 61.065, 51.005 and 51.0051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning financial planning for public institutions of higher education (Formula Funding and Tuition Charged for Excess Credit Hours of Undergraduate Students).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER G. PROCEDURES FOR CERTIFICATION OF ADEQUACY OF FUNDING

19 TAC §§13.120 - 13.125

The Texas Higher Education Coordinating Board adopts new §§13.120 - 13.125, concerning financial planning for public institutions of higher education (Procedures for Certification of Adequacy of Funding) without changes to the proposed text as published in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1637). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules. Specifically, the new rules includes minor modifications to existing rules regarding certification of adequacy of financing to make them consistent with current policies.

There were no comments concerning the new rules.

The new rules are adopted under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

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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Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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SUBCHAPTER H. PROCEDURES AND CRITERIA FOR FUNDING OF FAMILY PRACTICE RESIDENCY PROGRAMS

19 TAC §§13.140 - 13.146

The Texas Higher Education Coordinating Board adopts new §§13.140 - 13.146, concerning financial planning for public institutions of higher education (Procedures and Criteria for Funding of Family Practice Residency Programs) without changes to the proposed text as published in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1638). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules.

There were no comments received concerning the new rules.

The new rules are adopted under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

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-200102480
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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SUBCHAPTER I. PROCEDURES AND CRITERIA FOR FUNDING GRADUATE MEDICAL EDUCATION PROGRAMS

19 TAC §§13.160 - 13.164

The Texas Higher Education Coordinating Board adopts new §§13.160 - 13.164, concerning financial planning for public institutions of higher education (Procedures and Criteria for Funding Graduate Medical Education Programs) without changes to the proposed text as published in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1640). The new rules will simplify and streamline financial planning procedures and will incorporate existing standards into the rules.

There were no comments received concerning the new rules.

The new rules are adopted under the Texas Education Code, §61.059b which provides the Coordinating Board authority to review and revise funding formulas; §61.065 which authorizes the Board to prescribe and update a uniform system of reporting by institutions and to evaluate the informational requirements of the State; and §51.005 and 51.0051 which provides the Coordinating Board with the authority to approve the form of reports.

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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Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6162

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TITLE 25. HEALTH SERVICES

PART 8. INTERAGENCY COUNCIL ON EARLY CHILDHOOD INTERVENTION

CHAPTER 621. EARLY CHILDHOOD INTERVENTION

SUBCHAPTER G. DEVELOPMENTAL REHABILITATION THERAPY (DRT) SERVICES

25 TAC §§621.151 - 621.153

The Texas Interagency Council On Early Childhood Intervention adopts new §§621.151 - 621.153, concerning the General Provision for Developmental Rehabilitation Therapy Services for Infants and Toddlers with Disabilities or Developmental Delays, with changes to the proposed text as published in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10868).

The purpose of the rules is to establish procedures for Developmental Rehabilitation Services (DRS) providers to deliver developmentally appropriate individualized skills training and support to foster, promote, and enhance child engagement in daily activities, functional independence, and social interaction.

In conjunction with these new sections, The Health and Human Services Commission is simultaneously adopting new §355.113, concerning the reimbursement methodology for Developmental Rehabilitation Services for Children with Disabilities or Developmental Delays elsewhere in this issue of the *Texas Register*.

ECI received comments from the Texas Physical Therapy Association, program administrators from ECI of Tarrant County and ECI of Dallas Metrocare Services, and an individual physical therapy provider from an ECI program in Longview, Texas.

Comment: One commenter was concerned that the word "therapy" in the name of the service would imply services were being provided by a licensed therapist, which is misleading to program consumers. They were concerned that this would create and foster a public misunderstanding of the qualifications and skills of early intervention personnel as opposed to physical therapists.

Response: ECI agrees, and has amended the rule to change the name of the service from Developmental Rehabilitation Therapy to Developmental Rehabilitation Services. Providers of this service will not be referred to as "Developmental Rehabilitation Therapists."

Comment: The same commenter was concerned that early intervention specialists (EIS) may not be adequately qualified to provide DRS and should not be labeled as "therapists" as they are only required to have a bachelor's degree and may not have had the adequate early intervention coursework.

Response: ECI is changing the name of the service to eliminate the term "therapy." In addition, ECI currently requires EIS professionals to complete and earn certification through a comprehensive Competency Demonstration System administered by the state ECI office in order to assure qualification as providers of early intervention services.

Comment: Two commenters were concerned that the rules do not require adequate supervision of EIS professionals and teachers in providing developmental rehabilitation services, or for providing services to create a change in motor skills.

Response: ECI requires programs to provide support through supervision and mentoring as necessary to EIS professionals to ensure all services are provided in an appropriate and qualified manner. ECI agrees that EIS professionals are not qualified to provide physical therapy. Developmental Rehabilitation Services are not physical therapy services but rather assistance to caregivers in the identification and utilization of opportunities to incorporate therapeutic intervention strategies into daily life activities.

DRS is provided as per an individualized family service plan recommended and developed by an interdisciplinary team that must consist of at least one licensed practitioner of the healing arts. The licensed practitioner provides case supervision and monitoring of the child's progress with accomplishing therapy goals to ensure quality provision of the service.

Comment: The commenter was also concerned that the continuing education requirement of only 10 contact hours a year is too low for purposes of learning necessary techniques.

Response: ECI recognizes the importance of requiring the highest level of certification for individual providers of early intervention services. In addition to requiring EIS professionals to obtain certification through the Competency Demonstration System, ECI requires programs to provide support through supervision and mentoring as necessary to EIS professionals to ensure all services are provided in an appropriate and qualified manner. In addition to the required continuing education, early intervention professionals participate in numerous trainings, including quarterly statewide videoconferences and a summer training institute.

Comment: One commenter was concerned that prohibiting these services for children with developmental disabilities would exclude the large majority of ECI clients.

Response: Developmental Rehabilitation Services are available to all ECI children; however, this service is not reimbursed by Medicaid when provided to children diagnosed with a developmental disability in accordance with federal Medicaid regulations.

Comment: One commenter was concerned that this rule would change the present Medicaid billing of services provided by physical and other therapists, and that this rule would infringe on the Physical Therapy and Occupational Therapy Practice Acts.

Response: DRS is a distinct and separate service from the therapies required to be provided by physical and occupational therapists, and will have no impact on the rate for physical therapy or occupational therapies or the Physical Therapy or Occupational Therapy Practice Acts.

Comment: One commenter requested that psychological associates be included in the list of qualified providers of DRS.

Response: ECI agrees and has amended the rules to include psychological associates.

Comment: One commenter requested that Licensed Master Social Workers - Advanced Clinical Practitioners and Licensed Professional Counselors be included in the list of required providers and/or supervisors of DRS.

Response: ECI agrees and has amended the rule to include these providers.

In addition, based on concerns expressed by the federal Health Care Financing Administration (HCFA) regarding assurances that children in all areas of the state, including rural areas, will have access to DRS, the rules were amended to require that these services be provided in "natural environments."

In response to HCFA concerns regarding teacher qualifications to provide DRS the rules have been amended to require that teachers be certified through the ECI Competency Demonstration System.

The new sections are adopted under Chapter 73 of the Human Resources Code, §73.0051 and §73.022, which provides the agency with the authority to administer public programs for developmentally delayed children.

§621.151. Reimbursable Services.

(a) Developmental Rehabilitation Services are reimbursable to Medicaid providers who meet the conditions for provider participation as specified in §621.153 of this title (relating to Conditions for Developmental Rehabilitation Provider Participation). Developmental Rehabilitation Services are diagnostic, evaluative, and consultative services for the purposes of identifying or determining the nature and extent of, and rehabilitating an individual's medical or other health-related condition. They are medical and/or remedial services that integrate therapeutic interventions into the daily routines of the child and family in order to restore or maintain function and/or to reduce dysfunction resulting from a mental or physical disability or developmental delay. Developmental Rehabilitation services are designed to enhance development in the physical/motor, communication, adaptive, cognitive, social or emotional and sensory domains, or to teach compensatory skills for deficits that directly result from medical, developmental or other health-related conditions. Developmental Rehabilitation Services are provided as specified in the active Individualized Family Service Plan (IFSP) developed in accordance with §621.23(5)(A)-(K) of this title (relating to Service Delivery Requirements for Comprehensive Services). The services include:

(1) developmentally appropriate individualized skills training and support to foster, promote, and enhance child engagement in daily activities, functional independence, and social interaction;

(2) assistance to caregivers in the identification and utilization of opportunities to incorporate therapeutic intervention strategies into daily life activities that are natural and normal for the child and family;

(3) continuous monitoring of child progress in the acquisition and mastery of functional skills to reduce or overcome limitations resulting from disability or developmental delays.

(b) The services listed in subsection (a)(1)-(3) are performed by or under the supervision of a licensed physician, registered nurse, licensed physical therapist, licensed occupational therapist, licensed speech language pathologist, licensed professional counselors, or licensed master social workers-advanced clinical practitioners acting within their scope of practice. Supervision in this section means participation in the initial and annual comprehensive assessment of the child as well as participation in the initial and annual development of the IFSP and any subsequent revisions of the plan that result in service changes.

(c) Developmental Rehabilitation Services are not reimbursable as Medicaid services when:

(1) provided to children with a diagnosis of a developmental disability defined as a severe, chronic disability of a person which:

(A) is attributable to mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the person attains age 22;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency, or a diagnosis of mental retardation; or

(2) the services are guaranteed under the provisions of IDEA Part B.

§621.152. Recipient Eligibility for Developmental Rehabilitation Services

In order to receive Developmental Rehabilitation services, the recipient:

(1) must be enrolled in the Texas Medical Assistance Program;

(2) must be age 21 and under;

(3) must demonstrate the need for these services as documented in an active Individualized Family Service Plan (IFSP) developed in accordance with §621.23(5)(A)-(K) of this title (relating to Service Delivery Requirements for Comprehensive Services) .

§621.153. Conditions for Developmental Rehabilitation Services Provider Participation

(a) In accordance with the regulations at 42 CFR §431.51, all willing and qualified providers may participate in this program.

(b) In order to be reimbursed for developmental rehabilitation services as specified in §621.151 of this title (relating to Reimbursable Services), a provider must:

(1) meet applicable state and federal laws governing the participation of providers in the Medicaid Program;

(2) sign a provider agreement with the single state agency;

(3) be certified by the Texas Interagency Council on Early Childhood Intervention, the state program for infants and toddlers with developmental delays;

(4) provide services under the supervision of a licensed physician, registered nurse, licensed physical therapist, licensed occupational therapist, licensed speech language pathologist, licensed professional counselors, or licensed master social workers-advanced clinical practitioners acting within their scope of practice who are employed as agency or contract staff. Developmental rehabilitation services may be provided by:

(A) Licensed Therapists,

(B) Licensed Counselors,

(C) Licensed Social Workers,

(D) Registered Nurses,

(E) Early Intervention Specialist (EIS) professionals participating in or certified through the ECI Competency Demonstration System,

(F) Certified Teachers certified through the ECI Competency Demonstration System;

(G) Psychological Associates;

(5) provide services to all eligible children in natural environments. Natural environments are settings that individual families identify as natural or normal for their family, including the home, neighborhood, and community settings in which children without disabilities participate; and

(6) deliver services in accordance with the scope and duration of the Individualized Family Service Plan (IFSP).

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-200102527

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Interagency Council on Early Childhood Intervention
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For further information, please call: (512) 424-6750

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.831

The Comptroller of Public Accounts adopts an amendment to §3.831, concerning gross premium definitions for property and casualty, and title insurance companies with changes to the proposed text as published in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10883).

The amended section adds the gross premium definition for life, accident, and health insurance companies and health maintenance organizations including changes to the statute as a result of Senate Bill 530, 76th Legislature, 1999. The legislative change expands the gross premium exemptions to include coverage for employees of hospital districts and employees of county or municipal hospitals where the premiums are paid from a single non-profit trust for the sole purpose of funding such benefits.

Comments were received from Jay A. Thompson, an attorney representing the Texas Association of Life and Health Insurers, as well as IDS Life Insurance Company; R. Michael Pollard, executive director of the Texas Association of Life and Health Insurers; and Marybeth G. Stevens, senior counsel for the American Council of Life Insurance. All comments were related to specifically including "internal rollover premiums" in the gross premium definition for life insurance companies. An attorney pointed out that the preamble to the proposed rule did not include reference to internal rollover premiums. The comptroller has deleted "internal rollover premiums" from paragraph (2)(A) and intends to amend the rule to add internal rollover premiums at a later date. The commentors expressed concern that the proposed language expanded the definition of life gross premiums. Commentors believed that the Comptroller did not consider the fiscal and economic impact to life insurers. The commentors pointed out that this taxation would cause retaliatory problems. Commentors argued that this language would be double taxation. Commentors pointed out that there is a Texas Court of Appeals case pending on this issue. Because this language will not be included in the adopted rule, we will not address this comments at this time.

This amendment is adopted under the 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 the Tax Code, Title 2.

The amendment implements the Insurance Code, Article 4.10, Article 4.11, §2, Article 4.17, Article 9.59 and Article 20A.33.

§3.831. Gross Premium Definitions for Property and Casualty; Life, Accident, and Health; Health Maintenance Organizations; and Title

Insurance Companies; and Clarification of the Taxation on the Distribution of Title Premiums.

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

(1) Gross premium definition for property and casualty companies--

(A) Gross premiums are the total gross amount of premiums, membership fees, assessments, dues, and any other considerations for the taxable year on insurance written on each and every kind of property or risk located in the state, with no deduction for premiums paid for reinsurance, and excluding:

(i) return premiums (i.e., unearned premiums returned to policyholders);

(ii) dividends paid to policyholders;

(iii) premiums received from other licensed companies for reinsurance; and

(iv) premium finance charges clearly identified in a premium note or other evidence of premium payable that are separately stated to the policyholder (i.e., invoice, billing, contract).

(B) The following non-taxable premiums are deducted from gross premiums in order to calculate taxable premiums:

(i) crop insurance reinsured by the Federal Crop Insurance Corporation under Federal Crop Insurance Act (7 U.S.C. §1508), §508;

(ii) premiums for the Property Protection Program for Underserved Areas under Insurance Code, Article 5.35-3.

(C) Gross premium defined in subparagraph (A) of this paragraph applies to every insurance carrier, including Lloyds, reciprocal exchanges, and any other organization or concern writing gross premiums from the business of fire, marine, inland marine, accident, credit, livestock, fidelity, guaranty, surety, casualty, employers' liability, or any other kind or character of insurance. However, the definition does not apply to:

(i) title insurance companies;

(ii) premium receipts from the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit, or health maintenance organization coverage;

(iii) fraternal benefit associations or societies in this state, non-profit group hospital service plans, stipulated premium companies, mutual assessment associations, companies or corporations regulated by the Insurance Code, Chapter 14, as amended; and

(iv) cooperative or mutual fire insurance companies administered by the members thereof solely for the protection of their own property and not for profit.

(2) Gross premium definition for life, health, and accident insurance companies and health maintenance organizations--

(A) Gross premiums are the total gross amount of all premiums, including membership fees, assessments, dues and any other consideration received during the taxable year, with no deduction for premiums paid for reinsurance, on each and every kind of life, accident, or health insurance policy or contract that covers persons who are located in the State of Texas, or the gross amount of revenues for the issuance of health maintenance organization certificates or contracts, and excludes:

(i) return premiums (i.e., unearned premiums returned to policyholders);

(ii) dividends applied to purchase paid-up additions to life insurance or to shorten the endowment or premium payment period for life insurance policies;

(iii) premiums that an insurance carriers receives from another insurance carrier for reinsurance (a stop- loss or excess-loss insurance policy issued to a health maintenance organization is considered reinsurance);

(iv) premium finance charges that are clearly identified in a premium note or other evidence of premium payable, and that are separately stated to the policyholder (i.e., invoice, billing, contract);

(v) premiums received from the State Comptroller or from the Treasury of the United States for accident and health insurance or health maintenance organization coverage for which the state or federal government contracts for the purpose of providing welfare benefits to designated welfare recipients, or for insurance for which the state or federal government contracts in accordance with, or in furtherance of the provisions of the Human Resource Code, Title 2, or the Federal Social Security Act; and

(vi) premiums paid on group health, accident, and life insurance policies or health maintenance organization coverage in which the group covered has established a single non-profit trust to provide coverage primarily for employees of:

(I) a municipality, county, or hospital district in this state; or

(II) a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or another entity that operates the hospital on behalf of the county or municipality.

(B) The following non-taxable premiums are deducted from gross premiums in order to calculate taxable premiums:

(i) group benefits provided under Insurance Code, Articles 3.50-2, 3.50-3, and 3.50-4;

(ii) premiums for the Texas 65 Health Insurance Plan under Insurance Code, Article 3.71; and

(iii) premiums for the Federal Employees Health Benefit Program under United States Code, Title 5, §8909.

(C) The definition of gross premiums does not include annuities or annuity considerations. Therefore, annuities and annuity consideration are not subject to premium taxation under Article 4.11. However, annuities and annuity considerations are included for purposes of Article 4.17, Maintenance Tax on Gross Premiums, and are taxed accordingly. Maintenance taxes are assessed when annuities are purchased from insurance companies (at the time of annuitization), which is typically known as *back-end* reporting.

(D) The gross premium definition in subparagraph (A) of this paragraph applies to every insurance carrier that receives premiums from the business of life insurance, accident insurance, health insurance, life and accident insurance, life and health insurance, health and accident insurance, or life, health and accident insurance, including variable life insurance, credit life insurance, and credit accident and health insurance for profit or otherwise or for mutual benefit or protection in the State of Texas, and to every health maintenance organization that receives revenues for the issuance of certificates or contracts in the State of Texas.

(3) Gross premium definition for title insurance companies--Gross premiums are the total gross amount of premiums, membership fees, dues, and any other considerations received by the title insurer or its agent for the taxable year on title insurance written on property located in this state with no deduction for premiums paid for reinsurance, and excludes:

(A) premiums received from other licensed title insurance companies for reinsurance; and

(B) return premiums paid to policyholders.

(4) Taxation on distribution of title insurance premiums--

(A) Premium and maintenance taxes are levied on all amounts defined to be title premiums whether paid to the title insurance company or retained by the title insurance agent.

(B) The collection of the title premium tax and maintenance fee remitted to the comptroller on the premium retained by the title agent is incorporated in the division of the premium between insurer and agent so that the insurer receives the premium tax and maintenance fee due on the agent's portion of the premium.

(C) Title insurers and title agents are both subject to the premium and maintenance tax on their proportional share of the premiums and are separately liable for the tax if the insurer fails to remit the tax due on the agent's portion.

(D) The insurer is required to remit to the comptroller the total title premium and maintenance taxes due.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 2001.

TRD-200102524
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
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For further information, please call: (512) 463-4062

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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 §§12.3, 12.5, 12.15, 12.19, 12.25

The Texas Department of Human Services (DHS) adopts amendments to §§12.3, 12.5, 12.15, 12.19, and 12.25 to comply with the mandate of the Consolidated Appropriations Act of 2001 (Public Law 106-554) amending section 17(a)(2)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C 1766). In addition, DHS is reinstating a section of its Child and Adults Care Food Program (CACFP) rules inadvertently deleted during a recent rule amendment. The deleted section related to monitoring requirements will be reinstated by the adoption of §12.19(h).

The justification for the amendments to §§12.3, 12.5, 12.15, 12.19, and 12.25 is to comply with a federally legislated mandate to implement a pilot project in the Child and Adult Care Program (CACFP) to establish that proprietary, for profit child care centers are eligible to participate in the program if 25% or more of the center's children are receiving benefits through Title XX of the Social Security Act, or if 25% or more of the center's children are eligible for free or reduced price meals as defined in the National School Lunch Act. In addition, these amendments correct a technical error.

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

The amendments implement the Human Resources Code, §§22.001- 22.030 and §§33.001-33.024. The amendments are adopted in compliance with federal requirements effective December 21, 2000.

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

(a) To be eligible to participate in the Child and Adult Care Food Program (CACFP), contractors and facilities must meet the definitions in, and perform in accordance with, 7 Code of Federal Regulations §226.2, the appropriate requirements of 7 Code of Federal Regulations §§226.6, 226.15-226.19(a), 226.23, Section 17(a)(2)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766), as amended by the Consolidated Appropriations Act of 2001, and this chapter.

(b) To be eligible to participate in the CACFP as a day care home sponsor, applicants must:

(1) provide documentation that verifies that a minimum of 50 registered or licensed day care homes have signed an application and agreement, as specified by the Texas Department of Human Services (DHS), to participate under the contractor's sponsorship. Each day care home must be providing child care to at least one nonresidential child. Day care homes must be eligible to execute a sponsorship agreement in accordance with §12.6(f) of this title (relating to Agreement). DHS may approve applications for fewer than 50 day care homes, if the sponsorship of day care homes is an integral but subordinate part of an existing nonprofit or governmental community service provided by the sponsor;

(2) demonstrate that the governing authority is aware of the responsibilities and liabilities it accepts by agreeing to participate in the program;

(3) submit a comprehensive financial statement showing all expenditures and sources of income to the organization for the three years preceding the year for which application is made. Nongovernmental entities with fewer than three years of administrative and financial history that apply or reapply to participate in the CACFP as day care home contractors must submit a performance bond in an amount equal to the value of the contractor's projected annual level of reimbursement as determined by DHS. The performance bond must be obtained from a company designated in United States Treasury Circular 570 as certified to issue bonds for federally funded programs. Contractors required to submit a performance bond as a condition of eligibility must submit a performance bond as a condition of eligibility for each contract renewal until relief from the bonding requirement has been granted, and

must adjust the amount of the performance bond based on fluctuations in the value of the contract as determined by DHS. Contractors subject to the bonding requirement who have, at the time of application or reapplication, less than three but more than two years of administrative and financial history, may request relief from the bonding requirement after 12 months of successful program participation. Contractors who have less than two, but more than one year of administrative and financial history, may request relief from the bonding requirement after 24 months of successful program participation. Contractors who have less than one year of administrative and financial history may request relief from the bonding requirement after 36 months of successful program participation. DHS grants relief from the bonding requirement based on the above schedule and the contractor's successful program operation;

(4) designate the primary physical location at which they can be contacted, and where all program records will be maintained and essential program management functions will be conducted. Program records must be available to DHS staff during normal business hours. Normal business hours are 8:00 a.m. through 5:00 p.m., Monday through Friday. An appropriate representative of the contractor must be available to DHS staff and providers during normal business hours. Contractors are considered to be available to DHS staff and providers if a representative of the contractor can be contacted by telephone at the primary business location during normal business hours, or if the contractor has established a procedure which allows DHS staff and providers to leave a voice message at the primary business location, and the contractor returns the call not later than 24 hours from the time the voice message is left. Contractors must notify DHS in advance of their intent to change their physical location;

(5) maintain a secondary business office physically located in each DHS region in which they sponsor a day care home to conduct program management functions, except that a secondary business location is not required in the DHS region in which a sponsor's primary business office is located. An appropriate representative of the contractor must be available to DHS staff and providers during normal business hours. Normal business hours are 8:00 a.m. through 5:00 p.m., Monday through Friday. Contractors are considered to be available to DHS staff and providers if a representative of the contractor can be contacted by telephone at the secondary business location during normal business hours, or if the contractor has established a procedure which allows DHS staff and providers to leave a voice message at the secondary business location, and the contractor returns the call not later than 24 hours from the time the voice message is left. Contractors must notify DHS in advance of their intent to change a secondary business location; and

(6) submit a uniform set of management information each month, as described in §12.9 of this title (relating to Reporting and Record Retention), in fixed length, ASCII-Text (Standard Data File) format.

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

(d) To be eligible to participate in the CACFP, contractors must participate in program and program-related training deemed reasonable and necessary by DHS.

(e) To be eligible to participate in the CACFP as a sponsor of child or adult care centers, contractors who purchase meals from a food service management company (FSMC) must purchase such meals only from a FSMC that is:

(1) currently registered with DHS; or

(2) exempt from registration.

(f) To be eligible to provide food service to a contractor sponsoring the participation of child or adult care centers, FSMCs except public institutions, including but not limited to schools and hospitals, must register with the DHS's Special Nutrition Programs according to the stipulations and conditions listed in paragraphs (1)-(4) of this subsection.

(1) DHS approves applications for registration for a period not to exceed one year, with registrations expiring on March 14 of each year. The effective date of registration is the date DHS approves the application. FSMCs must reapply for registration each fiscal year.

(2) A registered FSMC must request the addition of a new or previously unregistered food preparation facility to its current registration prior to providing meals from such a facility to a child or adult care center participating in the CACFP.

(3) DHS conducts a preapproval visit to the FSMC and each food preparation facility to validate the information provided by the FSMC prior to approval of the application. The new facility cannot be approved retroactively.

(4) FSMCs applying for registration to provide food service to contractors sponsoring the participation of child and adult care centers in the CACFP, or applying to add a new or previously unregistered food preparation facility, must provide documentation of:

(A) the number of food preparation facilities under their direct control;

(B) compliance with state and local health and sanitation requirements at each food preparation facility;

(C) the number of meals the FSMC can produce daily at each food preparation facility;

(D) the ability of the FSMC to provide special diets to meet medical or religious needs;

(E) the ability of the FSMC to safely transport meals; and

(F) the availability of a registered dietitian for consultation.

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

(1) a letter from the IRS notifying the contractor that he has been granted tax-exempt status under the Internal Revenue Code of 1986 or

(2) proof of participation in another federal program that requires non-profit status.

(h) To be eligible to participate in the CACFP as a day care home sponsor, contractors must demonstrate their ability to perform according to the standards specified in §12.5 (b) of this title (relating to Application for Program Benefits - Contractors). In addition, contractors must provide as proof of their current tax- exempt status not less frequently than annually, a copy of their most recent IRS Form 990 (Return of Organization Exempt From Income Tax) submitted to the Internal Revenue Service.

(i) DHS requires applicants/contractors that are proprietary, for- profit entities to submit as proof of eligibility, a letter certifying that at least 25% of the enrollment or licensed capacity of the facility or facilities for which the contractor is making application received benefits under Title XX of the Social Security Act or that at least 25% of the enrollment or licensed capacity of the facility or facilities for which the contractor is making application are eligible for free or reduced-price meals in accordance with Section 17(a)(2)(B) of the Richard B. Russell National School Lunch Action (42 U.S.C. 1766) as amended by the Consolidated Appropriations Act of 2001 in the month before the month in which the application is submitted.

(j) DHS requires contractors to submit copies of a current licensure or registration to operate a day care facility when they:

(1) apply to participate in the CACFP; or

(2) receive a renewed or amended license or registration.

(k) Contractors are ineligible for the CACFP if they have permitted a member of the governing body, an agent, a consultant, or an employee of the contractor to enter the facility when children are present and any of these persons have been convicted of:

(1) a felony or misdemeanor classified as an offense against the person or the family, or as public indecency; or

(2) a felony violation of any statute intended to control the possession or distribution of a substance included in the Texas Controlled Substances Act.

(l) Contractors are ineligible for the CACFP if they have permitted a member of the governing body, an agent, a consultant, or an employee of the contractor to engage in any activity related to the administration of the CACFP and any of these persons have been convicted of a fraudulent activity, including cases in which adjudication is deferred.

(m) Contractors are ineligible for the CACFP if they sponsor the participation of a day care home which, after being afforded due process by the contractor, has been terminated for cause, including but not limited to program abuse, deficient program operation, and fraudulent activities, unless DHS has granted prior approval.

(n) DHS requires contractors to submit documentation of compliance with the requirements of the Single Audit Act. Contractors must submit as proof of eligibility one or more of the forms of documentation of compliance specified in paragraphs (1)-(3) of this subsection:

(1) a copy of an audit for a specific contractor fiscal year which has been determined to meet the requirements of the Single Audit Act;

(2) a completed DHS Single Audit Identification Data form containing assurance that the contractor will obtain an acceptable audit which will meet the requirements of the Single Audit Act; or

(3) documentation that the contractor is not subject to the Single Audit Act.

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

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

(2) operate an after school program which:

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

(B) includes educational or enrichment activities;

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

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

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

(p) Contractors that operate or sponsor the participation of one or more emergency shelters in the CACFP must provide documentation that the contractors':

(1) primary purpose is to temporarily house and provide meals to children and their parents or guardians; and

(2) facility or facilities meet all applicable state and local health, sanitation, and safety standards.

(q) To be eligible to participate in the CACFP, contractors must:

(1) distribute program information materials relating to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) as prescribed by the United States Department of Agriculture and DHS; and

(2) ensure that the program information materials relating to the WIC Program are distributed to the parents of children enrolled for child care in each child care facility participating in the CACFP under their sponsorship. Exception: Contractors are not required to distribute WIC program information materials to outside-school-hours centers or to the parents of children enrolled in outside-school-hours centers participating in the CACFP under their sponsorship.

(r) Contractors are ineligible for the Child and Adult Care Food Program (CACFP) if they have been determined to be ineligible to participate in any other publicly-funded program for having violated that program's requirements.

(s) To be eligible to participate in the CACFP, contractors that sponsor child care centers or family day care homes must employ an appropriate number of program monitors as approved by DHS in accordance with federal regulations and guidance.

(t) To be eligible to participate in the CACFP, contractors that sponsor child or adult care centers or family day care homes must establish and implement policies that restrict other employment activities engaged in by an employee of the contractor that would interfere with the employee's CACFP program responsibilities and duties.

§12.5. Application for Program Benefits - Contractors.

(a) To participate in the Child Care Food Program, contractors must submit applications to the Texas Department of Human Services (DHS). The contractor must submit an amended application to DHS when changes occur. DHS approves or denies application for participation according to 7 Code of Federal Regulations §§226.6, 226.15-226.18, 226.23, Section 17(a)(2)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) as amended by the Consolidated Appropriations Act of 2001, and this chapter.

(b) A sponsoring organization of day care homes must include in its applications for participation in the CACFP, sufficient detail to demonstrate that the organization will operate according to the following standards:

(1) the majority of the governing body must be composed of members of the community who are not financially interested in its activities, nor who are related parties. For the purpose of this section:

(A) majority means 50% plus one;

(B) individuals who are not financially interested in the activities of the organization are individuals other than the employees of the organization or sponsored day care providers;

(C) related parties are individuals who are related within the second degree by consanguinity or third degree by affinity to any member of the board of directors or employee of the sponsoring organization;

(2) members of the governing body may not vote on decisions relating to their own compensation (or of a related party);

(3) decisions about compensation of employees and other parties providing services to the organization must be made by the governing body;

(4) no person receiving compensation for services under CACFP may receive compensation for services from any other sponsoring organization; and

(5) sponsoring organizations must accept any qualified day care provider, consistent with their capacity to provide services to sponsored providers.

(c) Each contractor must submit to DHS as part of its program application the names of all officers, agents, consultants, and other employees of the sponsoring organization involved in any aspect of the Child Care Food Program.

(d) Contractors applying to sponsor the participation of child and adult care centers in the program must include sufficient information in their applications to demonstrate how they will:

(1) conduct preapproval visits of food service management companies (FSMCs) to determine their suitability and capacity to provide food service according to §12.3 of this title (relating to Eligibility of Contractors and Facilities), prior to awarding a contract;

(2) review the FSMCs and ensure that program deficiencies discovered during a review or by other means are corrected according to §12.19 of this title (relating to Program Reviews); and

(3) terminate the FSMC's contract for failure to comply with program requirements according to §12.25 of this title (relating to Denials and Terminations).

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

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

(g) To be eligible for start-up funds or expansion funds, contractors that sponsor day care homes must submit an application. DHS approves or denies applications for start-up and expansion funds according to 7 Code of Federal Regulations §§226.6, 226.12, 226.15, 226.16, and 226.23.

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

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

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

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

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

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

§12.15. Reimbursement Methodology.

(a) The Texas Department of Human Services (DHS) reimburses contractors and contractors reimburse facilities according to 7 Code of Federal Regulations §§226.2, 226.4, 226.6, 226.7, and 226.9-19a, 226.23, Code 7 of Federal Regulations Part 3015, and Section 17(a)(2)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) as amended by the Consolidated Appropriations Act of 2001. To assign rates of reimbursement for contractors, DHS uses the option in 7 Code of Federal Regulations §226.9(b)(3). DHS reimburses contractors according to the options in 7 Code of Federal Regulations §226.9(c)(1). DHS does not use the option described in 7 Code of Federal Regulations §226.9(d). DHS computes reimbursement for approved child care centers, outside-school-hours-care centers, adult day care centers, and family day care homes, according to the option in 7 Code of Federal Regulations §226.11(c)(3) and 226.13.

(b) Adult day centers that are independent centers and contractors that sponsor adult day care centers must ensure that the meals for which they claim reimbursement, whether prepared on site or by a food service management company, are not supported by Title III of the Older Americans Act. Title III benefits include all benefits provided under Part C of the Older Americans Act (OAA), including commodities (or cash-in-lieu of commodities) authorized by the OAA and provided by the U.S. Department of Health and Human Services. If the meals served at the ADC center are prepared by a food service management company, it is the responsibility of the contractor to ensure that

neither Title III funds nor commodities were used in the meals they have bought.

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

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

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

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

(1) requests an exception in writing; and

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

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

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

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

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

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

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

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

(j) Contractors that sponsor or operate emergency shelters for homeless children may include in a claim for reimbursement a maximum of:

(1) three meals (breakfast, lunch, and supper) per child per day; or

(2) two meals (breakfast, lunch, or supper) and one supplement per child per day; or

(3) two supplements and one meal (breakfast, lunch, or supper) per child per day.

(k) Contractors that sponsor or operate emergency shelters for homeless children may not include in a claim for reimbursement meals served:

(1) in private family quarters, except meals served to infants from birth to age 11 months; or

(2) to nonresidential children.

(l) To be eligible to operate a homeless site in the CACFP, a contractor must provide benefits to children age 12 and under. Exception: Eligible meals served to children of migrant workers age 15 or younger, and children with disabilities regardless of age are eligible for reimbursement.

§12.19. Program Reviews.

(a) Contractors must monitor their program operations and conduct administrative reviews according to 7 Code of Federal Regulations §§226.15 and 226.16. The Texas Department of Human Services (DHS) does not use the averaging option described in 7 Code of Federal Regulations §226.16(d)(4)(ii).

(b) DHS will conduct periodic visits to private nonprofit and private for-profit contractors participating in the Child and Adult Care Food Program (CACFP) who have been determined by DHS through the program review process and technical assistance sessions to have demonstrated potential for noncompliance with program requirements.

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

(d) Contractors that sponsor day homes conduct their reviews of day home providers according to 7 Code of Federal Regulations §226.16 and this chapter.

(e) Day home sponsoring organizations must conduct a minimum of one scheduled (announced in advance) and two unscheduled (unannounced) monitoring reviews of each of their day care homes each 12 months. A meal service must be observed during each of the

reviews. An unannounced follow-up review must be made no more than two weeks after a review at which the sponsor is unable to confirm program participation.

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

(g) Contractors that sponsor the participation of child and adult care centers must conduct a minimum of three monitor reviews of each of their facilities each 12 months; one visit each 12 months must be scheduled (announced in advance). Contractors that sponsor child or adult care centers must also conduct periodic unscheduled (unannounced) visits not less than once every three years.

(h) Contractors that sponsor the participation of child and adult care centers must:

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

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

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

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

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

§12.25. Denials and Terminations.

(a) The Texas Department of Human Services (DHS) denies applications for participation and terminates agreements, in whole or in part, between DHS and contractors for failure to meet basic eligibility requirements, and according to 7 Code of Federal Regulations §§226.6, 226.14-226.16, 226.18, 226.23, 226.25, and 7 Code of Federal Regulations Part 3015, and Section 17(a)(2)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) as amended by the Consolidated Appropriations Act of 2001.

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

(c) DHS terminates agreements, in whole or in part, and denies applications of contractors who have been determined to be seriously deficient in their administration of the program for failure to comply with program requirements as described in §§12.3, 12.5, 12.6, 12.20, and 12.24 of this title (relating to Eligibility of Contractors and Facilities, Application for Program Benefits-Contractors, Agreement, Training/Technical Assistance, and Sanctions and Penalties). DHS may approve an application and execute a contract with a contractor found to be seriously deficient for failure to comply with program requirements if such contractor demonstrates to the satisfaction of DHS that all serious deficiencies identified by DHS have been or will be corrected. DHS will establish a date by which the day care home sponsoring organization must submit an acceptable plan to correct the serious deficiencies identified by DHS. If a contractor fails to demonstrate by submission of an acceptable corrective action plan by the specified date that all serious deficiencies identified by DHS have been or will be corrected, DHS will notify the contractor that their agreement is terminated, in whole or in part, effective the last day of the month in which their corrective action plan was due and that DHS will deny payment of any claims for reimbursement after that date.

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

(e) Sponsoring organizations of day homes must terminate the participation of day home providers who have been found guilty of committing fraud in the Child and Adult Care Food Program (CACFP), including cases in which adjudication is deferred. Denial of participation in the CACFP is effective for the duration of the sentence of the court, and termination is effective when the sentence is pronounced.

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

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

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

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

(j) Sponsoring organizations of day homes must:

(1) terminate the participation of any day care home provider that they have determined has knowingly claimed meals for a child not enrolled for child care or not in attendance on a day that meals were claimed for the child; and

(2) submit the provider for inclusion on a list of seriously deficient providers.

(k) Sponsoring organizations of day homes must:

(1) terminate the participation of any day care home provider that refuses to enter into or comply with a corrective action plan designed to achieve compliance with program requirements: and

(2) submit the provider for inclusion on a list of seriously deficient providers.

(l) DHS denies or revokes the registration of a food service management company (FSMC) for failure to demonstrate its ability to perform according to program requirements, or for failure to submit all necessary documentation to complete the application within 60 calendar days. DHS may deny participation to a FSMC or any combination of its food preparation facilities. If DHS denies the application, the FSMC may not reapply for the remainder of the fiscal year in which

the application was submitted. A FSMC may appeal the denial or revocation of registration according to §12.26 of this title (relating to Appeals).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 7, 2001.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: December 21, 2000
For further information, please call: (512) 438-3108

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SUBCHAPTER B. SUMMER FOOD SERVICE PROGRAM

40 TAC §12.115

The Texas Department of Human Services (DHS) adopts an amendment to §12.115 as mandated by the Consolidated Appropriations Act of 2001 (Public Law 106-554) amending section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769), in its Special Nutrition Programs chapter.

Justification for the amendment to §12.115 is to comply with a federally legislated mandate to implement a pilot project in the Summer Food Service Program (SFSP) to increase participation by simplifying administrative requirements for certain sponsors in states with low SFSP participation. Government sponsors, public and private nonprofit school sponsors, public and private nonprofit National Youth Sports Program sponsors, and public and private nonprofit residential camp sponsors will be reimbursed strictly based on meals times rates with no comparison between meals times rates, costs, and budgets. All other private nonprofit sponsors will continue to be reimbursed using the current comparison formula.

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

The amendments implement the Human Resources Code, §§22.001- 22.030 and §§33.001-33.024. The amendments are adopted in compliance with federal requirements effective May 1, 2001.

§12.115. Reimbursement Methodology.

(a) Sponsors must comply with and the Texas Department of Human Services (DHS) reimburses sponsors according to the provisions of 7 Code of Federal Regulations §225.9 and Section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) as amended by the Consolidated Appropriations Act of 2001.

(b) Sponsors are reimbursed according to the rates of reimbursement stipulated in 7 Code of Federal Regulations §225.9.

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

(d) DHS does not pay claims postmarked or received by DHS later than 60 days after the last day of the month covered by the claim, unless the United States Department of Agriculture (USDA) determines that the submission of the late claim is the result of good cause beyond the contractor's control. If the final month of service is combined with the immediate preceding month to make a single claim, sponsors must ensure that the claim for reimbursement is postmarked, or received by DHS, no later than 60 days after the last day of meal service in the final month covered by the claim. For claims postmarked or received by DHS later than 60 days after the end of the month(s) covered by the claim, DHS will notify the contractor that they may submit a written request for payment which demonstrates that the claim was submitted late for good cause beyond the control of the contractor. If DHS does not agree that good cause beyond the control of the contractor exists for the submission of a claim later than 60 days after the end of the month(s) covered by the claim, DHS will notify the contractor that the request for payment will not be forwarded to USDA for consideration. If DHS agrees that the claim was submitted late for good cause beyond the control of the contractor, DHS will forward the request for payment to USDA with a recommendation that the claim be paid. If USDA determines that good cause exists, DHS may pay the claim. If USDA determines that good cause beyond the control of the contractor does not exist or if the contractor chooses not to submit a request for payment of a late claim demonstrating that good cause beyond his control exists, DHS may grant an exception and pay a claim postmarked or received by DHS later than 60 days after the end of the claim period provided that the contractor:

(1) requests an exception in writing; and

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

(e) Sponsors that operate fewer than 10 days in the last month of operation must submit a final combined claim which includes the last and immediate preceding month of operation.

(f) DHS elects to exercise the state option to consider the cost of meals served to adults performing labor necessary for the operation of the Summer Food Service Program (SFSP) to be an allowable program cost according to 7 Code of Federal Regulations §225.9(d)(4).

(g) Subject to the availability of state funding as appropriated by the Texas Legislature, DHS will provide a supplemental reimbursement for eligible meals served to eligible children by approved SFSP sponsors.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 7, 2001.

TRD-200102565
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2001
For further information, please call: (512) 438-3108

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CHAPTER 68. BUSINESS SERVICES
SUBCHAPTER E. FLEET MANAGEMENT

40 TAC §68.501

The Texas Department of Human Services (DHS) adopts new §68.501 published in the March 23, 2001 issue of the *Texas Register* (26 TexReg 2332). The new section is adopted without changes to the proposed text, and will not be republished.

Justification for the section is to comply with Government Code §2171.1045, which requires that agencies adopt rules relating to the assignment and use of agency vehicles.

The department received no comments regarding adoption of the new section.

The new section is adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs; and Texas Government Code §2171.1045, which directs state agencies to adopt rules consistent with the management plan adopted under §2171.104, relating to the assignment and use of the agency's vehicles.

The new section implements the Human Resources Code, §§22.001- 22.030 and the Government Code, §2171.1045.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 4, 2001.

TRD-200102541
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 24, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 438-3108

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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 Review

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) proposes to review Title 4, Texas Administrative Code, Part 1, Chapter 4, concerning Cooperative Marketing Associations, and Chapter 6, concerning Seed Arbitration, pursuant to the Texas Government Code, §2001.039 and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999 (Section 9-10.13). Section 9-10.13 and §2001.039 require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposes the repeal of §4.5 and §6.5. These proposals may be found in proposed rule section of this issue of the *Texas Register*. The assessment of Title 4, Part 1, Chapters 4 and 6, by the department at this time indicates that, with the exception of the sections proposed for repeal, the reason for adopting or readopting without changes all sections in Chapters 4 and 6 continues to exist.

The department is accepting comments on the review of Chapters 4 and 6. Comments on the review may be submitted within 30 days following the date of publication of this notice in the *Texas Register* to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711.

TRD-200102556

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: May 7, 2001

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Adopted Rule Review

Texas Commission for the Blind

Title 40, Part 4

The Texas Commission for the Blind has completed its review of all rules in Chapter 162 of the Texas Administrative Code in accordance with the Appropriations Act, Article IX, § 9-10.13, passed by the 76th Texas Legislature (1999).

The Board received no public comments in response to its notice of the rule review filed in the September 15, 2000, issue of the *Texas Register* (25 TexReg 9238). The public was invited to make comments on the rules as they exist in Title 40 TAC, Part 4, Chapter 162.

The Commission finds that the reasons for adopting all rules in the chapter continue to exist and they are hereby readopted without changes.

TRD-200102570
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: May 7, 2001

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IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas State Affordable Housing Corporation

Notice of Public Hearing

TEXAS STATE AFFORDABLE HOUSING CORPORATION MULTIFAMILY HOUSING REVENUE BONDS (WHAC ALLIANCE DEVELOPMENT) SERIES 2001

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on June 8, 2001 at 12:00 p.m., at the Freeman Memorial Library, 16602 Diana Lane, Houston, Texas 77062, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in the aggregate amount not to exceed $130,000,000, the proceeds of which will be loaned to WHAC Alliance LLC, an Internal Revenue Code Section 501(c)(3) corporation, to finance the acquisition and rehabilitation of nine separate multifamily housing projects (collectively, the "Projects") located in the cities of Amarillo, Austin, Corpus Christi, Houston, Lubbock, San Antonio, Temple, and Webster, Texas. The public hearing, which is the subject of this notice, will concern the Baystone Apartments containing 290 units, located at 800 W. Nasa Road 1, Webster, Texas 77598. The Projects will be owned by WHAC Alliance LLC.

All interested parties are invited to attend such public hearing to express their views with respect to the Projects and the issuance of the Bonds. Questions or request for additional information may be direct to Daniel C. Owen at the Texas State Affordable Housing Corporation, 1715 West 35th Street, Austin, Texas 78703; 1-888-638-3555 ext. 404.

Persons who intend to appear at the hearing and express their views are invited to contact Daniel C. Owen in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Daniel C. Owen prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Glenda Houchin David, ADA Responsible Employee, at 1-888-638-3555, ext. 417 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Glenda Houchin David at 1-888-638-3555, ext. 417, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Daniel Owen at dowen@tsahc.com.

TRD-200102588
Daniel C. Owen
Vice President
Texas State Affordable Housing Corporation
Filed: May 8, 2001

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Texas Department of Agriculture

Notice of Public Hearings

The Texas Department of Agriculture (the department) will hold public hearings to take public comment on proposed amendments to §20.1 and §20.3, the repeal of §20.2 and §§20.10 - 20.14, and new §§20.10 - 20.17, concerning the department's Boll Weevil Quarantine rules. The proposal was published in the Friday, May 4, 2001, issue of the *Texas Register* (26 TexReg 3313).

The hearings will be held as follows:

(1) Thursday, May 24, 2001, beginning at 1:30 p.m., Texas A&M Agricultural Research and Extension Center-Weslaco, 2401 East Hwy. 83, Weslaco, Texas, 78596;

(2) Friday, May 25, 2001, beginning at 9:00 a.m., Texas A&M Agricultural Research and Extension Center-Robstown, 10345 Agnes Street (Hwy. 44, 5 miles west of airport), Corpus Christi, Texas 78410;

(3) Friday, May 25, 2001, beginning at 2:30 p.m., Victoria County Agricultural Extension Service Building, 528 Waco Circle, Victoria, Texas 77904;

(4) Tuesday, May 29, 2001, beginning at 11:00 a.m., Texas A&M Agricultural Research and Extension Center-San Angelo, 7887 U.S. Highway 87 North, San Angelo, Texas 76901

(5) Tuesday, May 29, 2001, beginning at 3:00 p.m., Texas Engineering Extension Center-Abilene, 3650 Loop 322, Abilene, Texas 79602; and

Wednesday, May 30, 2001, beginning at 10:00 a.m., Godeke Library, 6601 Quaker, Lubbock, Texas 79413.

For more information please contact Ed Gage, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 463-5025.

TRD-200102605
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: May 9, 2001

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Automobile Theft Prevention Authority

Request for Applications under the Automobile Theft Prevention Authority Fund

Notice of Invitation for Applications:

The Automobile Theft Prevention Authority (ATPA) is soliciting applications for supplemental grants to be awarded for projects to reduce the incidence of economic automobile theft. This grant cycle will be two months in duration, and will begin on July 1, 2001 and end August 31, 2001.

Notice: Awards under this notice is contingent upon approval by the legislature of ATPA's full legislative appropriation request. Availability of funds will be announced after June 15, 2001.

Law Enforcement/Detection/Apprehension Projects, to establish motor vehicle theft enforcement teams and other detection/apprehension programs. Priority funding may be provided to state, county, precinct commissioner, general or home rule cities for enforcement programs in particular areas of the state where the problem is assessed as significant. Enforcement efforts covering multiple jurisdictional boundaries may receive priority for funding.

Prosecution/Adjudication/Conviction Projects, to provide for prosecutorial and judicial programs designed to assist with the prosecution of persons charged with motor vehicle theft offenses.

Prevention, Anti-Theft Devices and Automobile Registration Projects, to test experimental equipment which is considered to be designed for auto theft deterrence and registration of vehicles in the Texas Help End Auto Theft (H.E.A.T.) Program.

Reduction of the Sale of Stolen Vehicles or Parts Projects, to provide vehicle identification number labeling, including component part labeling and etching methods designed to deter the sale of stolen vehicles or parts.

Public Awareness and Crime Prevention/Education/Information Projects, to provide education and specialized training to law enforcement officers in auto theft prevention procedures, provide information linkages between state law enforcement agencies on auto theft crimes, and develop a public information and education program on theft prevention measures.

Eligible Applicants:

Current ATPA funded agencies are eligible to apply for supplemental grants for automobile theft prevention assistance projects.

Contact Person:

Detailed specifications, including selection process for applicants is available from ATPA.

Contact Agustin De La Rosa, Jr., Director,

Texas Automobile Theft Prevention Authority,

4000 Jackson Avenue, Austin, Texas 78779, (512) 374-5101.

Closing Date for Receipt of Applications:

The **original** and **three (3)** copies of the proposal must be received by the Texas Automobile Theft Prevention Authority by 5 p.m., May 30, 2001 or postmarked by May 30, 2001. If mailed, applications must be marked "Personal and Confidential" and addressed to the contact person listed above. If delivered, please leave application with the contact person (or designee) at the address listed.

Selection Process:

Applications will be selected according to rules §57.2, §57.4, §57.7, and §57.14, as published in Title 43 Chapter 57, Texas Administrative Code. Grant award decisions by ATPA are final and not subject to judicial review. Grants will be awarded on or before July 1, 2001.

TRD-200102534
Agustin De La Rosa, Jr.
Director
Automobile Theft Prevention Authority
Filed: May 4, 2001

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of March 30, 2001, through April 19, 2001. The public comment period for these projects will close at 5:00 p.m. on May 21, 2001.

FEDERAL AGENCY ACTIONS

Applicant: Davis Petroleum Corporation; Location: The project can be located on the U.S.G.S. quadrangle map entitled Port Bolivar, Texas. Approximate UTM Coordinates: Zone 15; Easting: 319650; Northing: 3260442. CCC Project No.: 01-0112-F1; Description of Proposed Action: The applicant proposes to drill Well Number 1 in State Tract 327 in Galveston Bay, Galveston County, Texas under Department of the Army Permit 21021(02). Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Davis Petroleum Corporation; Location: The project can be located on the U.S.G.S. quadrangle map entitled Port Bolivar, Texas. Approximate UTM Coordinates: Zone 15; Easting: 321588; Northing: 3262084. CCC Project No.: 01-0119-F1; Description of Proposed Action: The applicant proposes to drill Well Number 1 in State Tract 283 in Galveston Bay, Galveston County, Texas under Department of the Army Permit 21021(02). Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Reliant Exploration, Ltd.; Location: The project is located in State Tract No. 48 in Trinity Bay approximately 2 miles northeast of Beach City, Chambers County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled Umbrella Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 323779; Northing: 3283903. CCC Project No.: 01-0138-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Davis Petroleum Corporation; Location: The site can be located on the U.S.G.S. quadrangle map entitled Port Bolivar, Texas. Approximate UTM Coordinates: Zone 15; Easting: 321345; Northing: 3261613. CCC Project No.: 01-0129-F1; Description of Proposed Action: The applicant proposes to drill Well Number 4 in State Tract 312 in Galveston Bay, Galveston County, Texas under Department of the Army Permit 21021(02). Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Matagorda County-Palacios Seawall Commission; Location: The project site is located in Tres Palacios Bay, near Bayshore Drive, in Matagorda County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled Palacios, Texas. Approximate UTM Coordinates: Zone 14; Easting: 3773151 Northing: 3179120. CCC Project No.: 01-0141-F1; Description of Proposed Action: The applicant proposes to amend Department of the Army Permit No. 17473 to authorize removal of sections of an existing rock breakwater and excavation of the water circulation channels. The project purpose is to improve water circulation behind the Grassy Point Breakwater, which was constructed in 1992. In order to construct the 30-foot-wide by 3-foot deep circulation channels, approximately 1,500 cubic yards of soil would be hauled by truck to the Corps of Engineers Dredged Materials Placement Area No. 15. The circulation channels would extend from the breakwater to the existing channel located adjacent to the north shoreline. The applicant also proposes to construct 250 linear feet of rock revetment landward of the vegetation line and the mean high tide line at the west end of the Grassy Point Breakwater. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Reliant Exploration, Ltd.; Location: The project site is located in State Tract No. 48 in the Trinity Bay approximately 2-miles northeast of Beach City, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Umbrella Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 323779; Northing: 3283903. CCC Project No.: 01-0144-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, shell gravel pads, production structures with attendant facilities, and flowlines. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Cabot Oil & Gas Corporation; Location: The project site is located in the Corpus Christi Bayou channel, in Redfish Bay, in State Tract 256, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Estes, Texas. Approximate UTM Coordinates: Zone 14; Easting: 688886; Northing: 3089371. CCC Project No.: 01-0145-F1 Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities for Well Number 1. The project includes installation of typical marine barges and keyways, production platforms with attendant facilities, and flowlines between well and production platforms. If necessary, approximately 1000 cubic yards of shell, gravel, or crushed rock will be discharged to construct a pad to position the marine barge. The approximate water depths of Corpus Christi Bayou at the proposed project location range from 3-feet mean low tide near the northern edge of the channel to 12-feet mean low tide near the channel center line. The equipment and structures noted on the plans are typical for the proposed activity, and the layouts and locations of platform structures and flowlines in relation to Well Number 1 are conceptual. Type of Application: Corpus Christi Bayou and Redfish Bay are navigable waters of the United States. This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Cabot Oil & Gas Corporation ; Location: The project site is located in the Corpus Christi Bayou channel, in Corpus Christi Bay, in State Tract 286, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Estes, Texas. Approximate UTM Coordinates: Zone 14; Easting: 688269; Northing: 3087685. CCC Project No.: 01-0146-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities for Well Number 1. The project includes installation of typical marine barges and keyways, shell gravel pads, production platforms with attendant facilities, and flowlines between -well and production platforms. If necessary, approximately 200 cubic yards of shell, gravel, or crushed rock will be discharged to construct a pad to position the marine barge. The approximate water depths of Corpus Christi Bayou at the proposed project location range from 5-feet mean low tide near the northern edge of the channel to 9-feet mean low tide near the channel center line. The equipment and structures noted on the plans are typical for the proposed activity, and the layouts and locations of platform structures and flowlines in relation to Well Number 1 are conceptual. Type of Application: Corpus Christi Bayou and Redfish Bay are navigable waters of the United States. This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Texas Point National Wildlife Refuge; Location: The project site is located at the Texas Point National Wildlife Refuge, adjacent to Pilot Station Road, Sabine Pass, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Texas Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 417900; Northing: 3284800. CCC Project No.: 01-0147-F1; Description of Proposed Action: The applicant proposes to place a rock plug into the roadside canal at the marsh elevation. The diameter of the rocks used for the plug will vary between 4 and 18 inches, which will allow a limited exchange of water to occur. Between 4-6 feet of rock will be deposited during the construction of the rock plug. The bottom soil is soft and some sinking will occur. The final height after expected sinking will be approximately 1-foot below the mean high tide line. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information for the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200102609
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: May 9, 2001

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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 §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of May 14, 2001 - May 20, 2001 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of May 14, 2001 - May 20, 2001 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200102578
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 8, 2001

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Texas Commission for the Deaf and Hard of Hearing

Notice of Request for Proposals

The Texas Commission for the Deaf and Hard of Hearing announces a Request for Proposals (RFP) for services to eliminate communication barriers and to facilitate communication access for individuals who are deaf or hard of hearing. Funding is available to provide Regional Specialist services to facilitate and coordinate the provision of accessible state and local services to persons of all ages. (This announcement replaces the one made on May 11, 2001 regarding Regional Specialist services funding. The previous announcement was pulled in order to extended the contract period from 2 years to up to 4 years.)

Note to Applicants: The estimated funding levels in the RFP does not bind TCDHH to make awards in any of these categories, or to any specific number of awards or funding levels.

Contact: Parties interested in submitting a proposal for any of the funding categories should contact the Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711, 512-407-3250 (Voice) or 512-407-3251 (TTY), to obtain a complete copy of the. The RFP is also available for pick-up at 4800 North Lamar, Suite 310, Austin, Texas 78756 on and after Friday, May 18, 2001, during normal business hours. The RFP is not available through fax. The RFP will also be available on the agency website at www.tcdhh.state.tx.us.

Closing Date: Proposals must be received in the Texas Commission for the Deaf and Hard of Hearing Office, 4800 North Lamar, Suite 310, Austin, Texas 78756 no later than 5 p.m. (CDT), on Friday, June 22, 2001. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a review team using a scoring method based on the evaluation criteria set forth in the RFP. The review team will determine which proposals best meet the established criteria and will make selection recommendations for each category to the Executive Director, who will then make recommendations to the Commission. The Commission will make the final decision prior to final selection. Any applicant may be asked to clarify any information in their proposal and which may involve either written or oral presentations of requested information. The initial contract award shall be for 12 months with the renewal option of three 12 month awards, for a potential four year project period.

The Commission reserves the right to accept or reject any or all proposals submitted. The Texas Commission for the Deaf and Hard of Hearing is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits the Commission to pay for any costs incurred prior to the award of a contract. The anticipated schedule of events is as follows:

Issuance of RFP - May 18, 2001;

Proposals Due - June 22, 2001, 5 p.m. (CDT);

Estimated Project Period (months) - 12 with 3 additional 12 month renewal options;

Estimated number of awards-11;

Maximum award amount per 12 month period-$45,000; and

Contract Period - September 1, 2001 to August 31, 2002.

TRD-200102604
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Filed: May 9, 2001

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East Texas Council of Governments

Notice of Request for Proposals for Purchase of Marketing Products

This Request for Proposals to interested vendors is filed under the provisions of Government Code 2254.

Notice is given that the East Texas Council of Governments (ETCOG) as the administrative entity for the local Workforce Development Board is soliciting information on the purchase of marketing products to promote the East Texas Workforce Development Board to East Texas employers. Products to be purchased include posters, brochures, radio spots, and a video.

Interested parties should contact: Daniel Pippin, Regional Planner, ETCOG (903) 984-8641. If Mr. Pippin is unavailable, you may speak with Gary Allen, Section Chief-Planning and Board Support. Requests for the Request for Proposals should be sent to: East Texas Council of Governments 3800 Stone Road Kilgore, TX 75662 Attention: Wendell Holcombe Fax: 903-983-1440

The closing date for the receipt of responses to the Request for Quotations is 5:00 p.m. Central Daylight Time, June 12, 2001.

The ETCOG Executive Committee, who will be responsible for the contract award, will review the responses.

TRD-200102591

Glynn Knight
Executive Director
East Texas Council of Governments
Filed: May 8, 2001

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Texas Department of Health

Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Humble	Cardiovascular Association PLLC	L05421	Humble	00	04/23/01
Throughout Tx	Gulf Coast Weld Spec	L05426	Orange	00	04/26/01

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Abilene	Hendrick Memorial Center	L02433	Abilene	69	04/20/01
Alice	Usman Qureshi MD PA	L05366	Alice	01	04/26/01
Alvin	Amoco Chemical Co Chocolate Bayou Plant	L11422	Alvin	53	04/30/01
Arlington	Physician Reliance Network Inc	L05116	Arlington	03	04/24/01
Austin	Austin Radiological Association	L00545	Austin	93	04/16/01
Beaumont	Exxonmobil Chemical Company	L02316	Beaumont	26	04/30/01
Brownfield	Brownfield Regional Medical Center	L02541	Brownfield	19	04/19/01
Bryan	St Joseph Regional Health Center	L00573	Bryan	54	04/18/01
Carthage	East Texas Medical Center Carthage	L02540	Carthage	26	04/20/01
Cleburne	Walls Regional Hospital	L02039	Cleburne	15	04/20/01
Conroe	CHCA Conroe LP	L01769	Conroe	58	04/20/01
Corpus Christi	Sherwin Alumina Company	L00200	Corpus Christi	38	04/17/01
Dallas	Texas Cardiology Consultants	L04997	Dallas	19	04/27/01
Dallas	Medical Service/Dallas	L02604	Dallas	22	04/18/01
Dallas	The Univ of TX Southwestern Med Ctr at Dallas	L00384	Dallas	72	04/24/01
Dallas	The Cardiovascular Consultants LLP	L04627	Dallas	04	04/23/01
Deer Park	Resolution Performance Products LLC	L05323	Deer Park	01	04/18/01
Denton	International Isotopes Inc	L05159	Denton	18	04/20/01
Edinburg	The University of Texas Pan American	L00656	Edinburg	22	04/25/01
El Paso	R E Thomason General Hospital	L00502	El Paso	50	04/30/01
Fairfield	East Texas Medical Center Fairfield	L05195	Fairfield	01	04/20/01
Fort Worth	University of North Texas Health Sci Ctr Ft Worth	L02518	Fort Worth	24	04/26/01
Friendswood	ISO-TEX Diagnostics Inc	L02999	Friendswood	33	04/24/01
Houston	Columbia/HCA Healthcare Corp	L02473	Houston	41	04/26/01
Houston	The Methodist Hospital Dept of Radiation Safety	L00457	Houston	98	04/17/01
Houston	Northwest Outpatient Cancer Center	L05411	Houston	01	04/18/01
Houston	CHCA West Houston LP	L02224	Houston	53	04/20/01
Houston	Cardiovascular Ventures of West Houston Inc	L04882	Houston	11	04/20/01
Houston	University of Houston	L01886	Houston	45	04/26/01
Houston	Ben Taub General Hospital	L01303	Houston	52	04/26/01
Houston	M-I LLC	L02761	Houston	07	04/27/01
Houston	Lyondell-Citgo Refining LP	L00187	Houston	50	04/30/01
Kingsville	Texas A&M University Kingsville	L01821	Kingsville	27	04/19/01
Longview	Good Shepherd Medical Center	L02411	Longview	62	04/24/01
Lubbock	Covenant Medical Center	L00483	Lubbock	112	04/16/01
Lubbock	Covenant Health System	L01547	Lubbock	65	04/16/01

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Lubbock	Covenant Health System	L04881	Lubbock	21	04/18/01
Lubbock	M Fawwaz Shoukfeh MD PA	L05276	Lubbock	04	04/19/01
Lubbock	Covenant Health System	L04881	Lubbock	22	04/19/01
Lubbock	University Medical Center	L04719	Lubbock	41	04/20/01
Lubbock	Highland Health System Inc	L02467	Lubbock	22	04/24/01
Lubbock	Covenant Medical Center	L00483	Lubbock	113	04/30/01
Lufkin	Donohue Industries Inc	L03870	Lufkin	11	04/20/01
Orange	Southeast Texas Cardiology Associates II LLC	L05204	Orange	03	04/20/01
Pasadena	CHCA Bayshore LP	L00153	Pasadena	70	04/25/01
Point Comfort	Formosa Plastics Corporation-Texas	L03893	Point Comfort	22	04/30/01
Port Lavaca	Union Carbide Corporation	L00051	Port Lavaca	69	04/17/01
Port Lavaca	Seadrift Coke LP	L03432	Port Lavaca	10	04/18/01
Port Lavaca	Memorial Medical Center in Calhoun County	L04685	Port Lavaca	03	04/20/01
San Antonio	Baptist Imaging Center	L04506	San Antonio	26	04/23/01
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	156	04/20/01
Stephenville	Harris Methodist Erath County	L03097	Stephenville	21	04/26/01
Throughout Tx	Professional Service Industries Inc.	L03642	Houston	21	04/27/01
Throughout Tx	Team Consultants Inc	L04012	Dallas	07	04/17/01
Throughout Tx	O'Malley Engineers LLP	L02310	Brenham	19	04/17/01
Throughout Tx	Longview Inspection Inc	L01774	Houston	164	04/17/01
Throughout Tx	Anatec Inc	L04865	Nederland	41	04/17/01
Throughout Tx	Brazos Valley Inspection Services Inc	L02859	Bryan	39	04/19/01
Throughout Tx	Trinity Engineering Testing Corporation	L01351	Corpus Christi	38	04/20/01
Throughout Tx	Lotus LLC	L05147	Andrews	06	04/20/01
Throughout Tx	Applied Industrial Materials Corporation	L04051	Texas City	06	04/23/01
Throughout Tx	Longview Inspection Inc	L01774	Houston	165	04/30/01
Throughout Tx	Metco	L03018	Houston	110	04/30/01
Tyler	Trinity Mother Frances Health System	L01670	Tyler	83	04/18/01
Victoria	Victoria of Texas LP	L03575	Victoria	17	04/20/01
Wichita Falls	Clinics of North Texas LLP	L00523	Wichita Falls	35	04/30/01

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Houston	Houston Northwest Radiotherapy Center	L02416	Houston	22	04/30/01
Houston	Goodyear Tire & Rubber Company	L00264	Houston	23	04/30/01
San Antonio	The Univ of TX Health Sci Ctr at San Antonio	L01279	San Antonio	87	04/24/01
Throughout Tx	Cooperheat-MQS Inc	L00087	Houston	86	04/12/01
Throughout Tx	Bonded Inspections Inc	L00693	Garland	58	04/30/01

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Oklahoma City	Stantech Engineering Co	L02234	Oklahoma City	20	04/18/01

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC) Chapter 289, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200102567
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 7, 2001

Notice of Amendment to Radioactive Material License

Notice is hereby given by the Texas Department of Health (department), Bureau of Radiation Control that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

The issuance of amendment number 14 authorizes the licensee to: (1) conduct in-house decontamination of items contaminated as a result of processing activities and as a consequence of shipment of radioactive waste; and (2) release solid objects that do not exceed the limits for surface contaminated objects.

The department has determined that the amendment of the license, 25 Texas Administrative Code (TAC), Chapter 289, and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste facility is sited, designed, operated, and will be decommissioned and closed in accordance with the requirements of 25 TAC, Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Health and Safety Code, §401.116 and as set out in 25 TAC, §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 Texas Administrative Code §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 Texas Administrative Code, Chapter 155).

A copy of the license amendment and supporting materials are available for public inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Bureau of Radiation Control.

TRD-200102617

Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 9, 2001

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Notice of Default Order

A default order was entered regarding Ronald L. Dill and Tracer Laboratory of Midland, Inc., Docket Number A2085-876-2001; Texas Department of Health License Number L03298 (Revoked); Compliance Number EL89-005 on April 18, 2001, assessing $20,000 in administrative penalties.

Information concerning this order is available for public inspection Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 W. 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building at 8407 Wall Street, Austin, Texas.

TRD-200102618
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 9, 2001

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Notice of Request for Proposals for Emergency Medical Services (EMS) Examination Development Program

PURPOSE: The Emergency Medical Services (EMS) Examination Development Program was established for the purpose of improving EMS certification examinations throughout Texas by contracting with an organization, corporation, college or university to develop such examinations. This program is administered by the Bureau of Emergency Management (Bureau) of the Texas Department of Health (department). The program provides reimbursement for approved cost incurred for a specific project completed during a specified contract period, September 1, 2001 - August 31, 2003.

DESCRIPTION: The department is seeking proposals for the development of psychometrically valid, reliable, error free and legally defensible initial, initial retest, recertification and recertification retest competency examinations for the Emergency Care Attendant (ECA), Emergency Medical Technician- Basic (EMT-B), Emergency Medical Technician- Intermediate (EMT-I), and Emergency Medical Technician-Paramedic (EMT-P), and Licensed Paramedic (LP).

ELIGIBLE APPLICANTS: Proposals will be accepted from qualified organizations, corporations, colleges and universities that are involved in the development and administration of examinations and in pre-hospital emergency care education. Applicants must be in good standing with no administrative action against them by the Department or any national accrediting agency.

Failure to comply with these requirements of the contract constitutes grounds for revocation of any award as part of the EMS Examination Development Program.

CONTACT: Information concerning the Request or Proposal (RFP) may be obtained from Kathy Perkins, Bureau Chief, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, telephone (512) 834-6700, fax (512) 834-6736, or email (Kathy.Perkins@tdh.state.tx.us).

DEADLINE: The deadline for submitting the application, required forms and copies will be midnight June 25, 2001. Only those applications and copies that are received or postmarked on or before June 25, 2001, will be reviewed, regardless of the circumstances. Applications may be mailed or hand delivered. If delivered by hand, the proposal must be taken to the Exchange Building, Bureau of Emergency Management, 8407 Wall Street, Suite S220, Austin, Texas, no later than the close of business (5:00 P. M.) of the specified deadline.

EVALUATION AND SELECTION: Proposals will be reviewed and evaluated based on information provided by the applicant. Eligibility criteria includes:

An evaluation of all information in the application.

A consideration of the applicant's experience in examination development.

The applicant's numerical Examination Development Application score.

References.

Proposals will be reviewed to ensure all budget items requested are applicable and appropriate and that implementation of the proposed project is possible. The Commissioner of Health or the Commissioner's appointed agent will give final approval of the entity chosen.

INFORMATION MEETING: A meeting with all interested applicants will be held at the department's offices in Austin to address any questions relating to the EMS Examination Development Proposal. Applicants may call the Bureau's office, 512-834-6700, for information as to date, time and location.

TRD-200102616
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 9, 2001

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Houston Galveston Area Council

Notice of Public Hearings to Solicit Comments on Proposed Child Care Rules

The Houston-Galveston Area Council (H-GAC) in conjunction with The WorkSource - Gulf Coast Workforce Board will be holding Public Hearings to solicit comments on proposed child care rules for its 13-county workforce service region. This region includes the counties of Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Harris, Liberty, Matagorda, Montgomery, Walker, Waller and Wharton. Public Hearings for Child Care will be held: * May 15, 2001 in Lake Jackson from 1:00 p.m. to 3:00 p.m. at The WorkSource - Gulf Coast Careers, 491 This Way * May 16, 2001 in Katy from 2:00 p.m. to 4:00 p.m. at the University of Houston - West Houston Institute at Cinco Ranch, 4242 South Mason Road * May 17, 2001 in Conroe from 10:00 a.m. to noon at the Montgomery Public Library, 104 I-45 North at FM 2854 * May 17, 2001 in Houston from 6:00 p.m. to 8:00 p.m. at the Houston-Galveston Area Council, 3555 Timmons, 2nd floor, Conference Room A

Proposed changes include * Providing Time-Limited Care * Increasing Parent Co-payments * Lowering Exit Level Income for Families * Restricting Child Care Subsidies to Younger Children

To obtain a draft of the proposed recommendations, please visit the website www.theworksource.org or contact Carol Kimmick at 713-627-3200 or write H-GAC, The WorkSource, P.O. Box 22777, Houston, TX 77227-2777.

To forward comments regarding the proposed rules, mail to H-GAC, The WorkSource at the above address, fax to 713-993-4578 or e-mail RAY@hgac.cog.tx.us . The deadline for comments is June 15, 2001.

TRD-200102594
Jack Steele
Executive Director
Houston Galveston Area Council
Filed: May 8, 2001

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Request for Qualifications

The Houston-Galveston Area Council (H-GAC) is requesting qualifications submittals for assistance to H-GAC staff in the application of urban regional travel models and development of model input data.

Qualifications will include, but are not limited to: previous related work experience, availability of personnel, adequate technical resources to complete project on schedule, and references, three minimum. Qualification Statements are due by 12:00 Noon, May 29, 2001. Ten typewritten, bound/stapled and signed copies are required.

Interested firms may obtain the Request for Qualifications Submittal via H-GAC's web site (www.hgac.cog.tx.us/transportation). Telephone requests, (713) 627-3200, must be followed up by written requests or faxed to (713) 993-4508.

TRD-200102528
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: May 3, 2001

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Texas Department of Insurance

Insurer Services

Application for admission to the State of Texas by NATIONAL TITLE INSURANCE OF NEW YORK, INC., a foreign title company. The home office is in Commack, New York.

Application for admission to the State of Texas by AMERICAN SURETY AND CASUALTY COMPANY, a foreign fire and casualty company. The home office is in Jacksonville, Florida.

Application for incorporation to the State of Texas by OMNIA LIFE INSURANCE COMPANY, a domestic life company. The home office is in Austin, Texas.

Application to change the name of XL CAPITAL ASSURANCE INC. ONLY to XL CAPITAL ASSURANCE INC., a foreign fire and casualty company. The home office is in New York, New York.

Application to change the name of EMPLOYERS INSURANCE OF WAUSAU A MUTUAL COMPANY to EMPLOYERS INSURANCE COMPANY OF WAUSAU., a foreign life, fire and casualty company. The home office is in Wausau, Wisconsin.

Application for admission to the State of Texas by HALLMARK INSURANCE COMPANY, INC. under the assume name UNITED NATIONAL ASSURANCE COMPANY, a foreign fire and casualty company. The home office is in Milwaukee, Wisconsin.

Application for incorporation to the State of Texas by AMCARE HEALTH PLANS OF TEXAS, INC., under the assume name AMCARE HEALTH PLANS a domestic Health Maintenance Organization. The home office is in Houston, Texas.

Application for incorporation to the State of Texas by HEALTH PLANS OF TEXAS, INC., under the assume name AMCARE FIRST a domestic Health Maintenance Organization. The home office is in Houston, Texas.

Application for incorporation to the State of Texas by AMCARE HEALTH PLANS OF TEXAS, INC., under the assume name AMCARE ARRIVALS a domestic Health Maintenance Organization. The home office is in Houston, Texas.

Application for incorporation to the State of Texas by AMCARE HEALTH PLANS OF TEXAS, INC., under the assume name AMCARE MEDICARE HEALTH PLAN a domestic Health Maintenance Organization. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200102520
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: May 2, 2001

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Insurer Services

Application for incorporation to the State of Texas by LIBERTY AMERICAN LLOYDS INSURANCE COMPANY, a domestic Lloyds/Reciprocal company. The home office is in Austin, Texas.

Application to change the name of HALLMARK INSURANCE COMPANY, INC. to UNITED NATIONAL SPECIALTY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Milwaukee, Wisconsin.

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-200102607
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: May 9, 2001

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Texas Natural Resource Conservation Commission

Extension of Comment Period

In the March 9, 2001 issue of the *Texas Register*, the Texas Natural Resource Conservation Commission (commission) published proposed amendments to 30 TAC Chapter 331, concerning Underground Injection Control (26 TexReg 2004). The preamble to the proposal stated that the commission must receive all written comments by 5:00 p.m., April 16, 2001. The commission extended the deadline for receipt of written comments to 5:00 p.m., May 7, 2001 for these proposed amendments. The commission has extended the deadline for receipt of written comments to 5:00 p.m., May 21, 2001 for this proposal.

Written comments should be mailed to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. For further information on the proposed revisions, please contact Ray Henry Austin at (512) 239-6814. Copies of the proposed

amendments can be obtained from the commission's Web Site at www.tnrcc.state.tx.us/oprd/rules/propadop.html.

TRD-200102589
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 8, 2001

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Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit

For the Period of May 9, 2001

APPLICATION. Chambers County which operates a Type V incinerator has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a permit amendment to authorize the elimination of the percentage limitation on medical waste, and process municipal solid waste, or other similar or related waste streams as the demand dictates. The facility size and structure layout will be altered and numerous minor operational changes will also be made. The facility is located 8.5 miles east of the town of Anahuac, Texas, on the north side of State Highway 65, and approximately two miles south of Interstate Highway 10 in Chambers County, Texas. This application was submitted to the TNRCC on May 1, 2000. The permit application is available for viewing and copying at the Chambers County Engineer's Office located at 201 Airport Road in Anahuac, Texas. The application is subject to the goals and policies of the Texas Coastal Management Program and must be consistent with the applicable Coastal Management Program goals and policies. The TNRCC executive director has determined the application is administratively complete and will conduct a technical review of the application. After completion of that review, the TNRCC will issue a Notice of Application and Preliminary Decision.

MAILING LISTS. You may ask to be placed on a mailing list to obtain additional information on 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 comments 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. 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, TX 78711-3087.

ADDITIONAL NOTICE. After technical review of the application is completed, the executive director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list or the mailing list for this application. That notice will contain the final deadline for submitting public comments.

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 is on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the executive director's decision and for requesting a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in 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.

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 Chambers County at the address stated above or by calling Mr. Donald Brandon P.E. at (409) 267-8379.

TRD-200102619
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 9, 2001

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Notice of Minor Amendment

For the Period of May 4, 2001

APPLICATION. The City of Farmers Branch, P.O. Box 819010, Farmers Branch, Texas 75381-9010, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a minor permit amendment to Permit No. MSW-1312A which would authorize the revision to the Site Development Plan to allow a revision to the landfill footprint by relocating Pond 1 and to allow an alternate landfill liner which uses tire chips and general fill as the protective layer. The municipal solid waste landfill for the City of Farmers Branch is located on a 349.97 acre site approximately 0.8 miles south of SH-121, north of the Elm Fork of the Trinity River, and 1.5 miles west of FM-2281 in Hebron, Denton County, Texas. The Executive Director of the TNRCC has prepared a draft permit which, if approved, will authorize a minor amendment to this permit under the terms described above.

PUBLIC COMMENT. Written comments concerning this minor amendment may be submitted to the TNRCC, Chief Clerk's Office, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 telephone (512) 239- 3300. Comments must be received no later than 10 days from the date this notice is mailed. Written comments must include the following: (1) your name (or for a group or association, the name of an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; and (3) the location of your property relative to the applicant's operations. INFORMATION. Individual members of the public who wish to inquire about the information contained in this notice may contact the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-200102621
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 9, 2001

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Notice of Non-Adjudicatory Public Hearing (TMDL)

The Texas Natural Resource Conservation Commission (TNRCC or commission) has made available for public comment a draft implementation plan concerning depressed dissolved oxygen in Lake Austin in Travis County, Texas. The commission will also conduct a non-adjudicatory public hearing to receive comment on the implementation plan.

Lake Austin is included in the State of Texas Clean Water Act, §303(d), List of impaired water bodies. As required by federal Clean Water Act, §303(d), the Total Maximum Daily Load (TMDL) was developed for dissolved oxygen. The TMDL was adopted by the commission on November 17, 2000 as an update to the State Water Quality Management Plan. Upon adoption by the commission, the TMDL was submitted to the United States Environmental Protection Agency for review and approval.

A non-adjudicatory public hearing will be held in Austin, Texas on June 19, 2001, at 7:00 p.m., at the Lower Colorado River Authority, Hancock Building, Board Room, 1st Floor, 3700 Lake Austin Boulevard. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the matter 30 minutes prior to the hearing and will answer questions before and after the hearing. The purpose of the public hearing is to provide the public an opportunity to comment on the proposed plan. The commission requests comment on each of the six major components of the implementation plan: Description of Management Measures, Legal Authority, Implementation Schedule, Follow-up Monitoring Plan, Reasonable Assurance, and Measurable Outcomes. After the public comment period, TNRCC staff may revise the implementation plan, if appropriate. The final implementation plan will then be considered for approval by the commission. Upon approval of the implementation plan by the commission, the final implementation plan and a response to public comments will be made available on the commission's website at *http://www.tnrcc.state.tx.us/water/quality/tmdl*. The implementation plan is a flexible tool that the governmental and non-governmental agencies involved in TMDL implementation will use to guide their program management.

Written comments should be submitted to Joyce Spencer, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments must be received by 5:00 p.m., June 20, 2001, and should reference 2001-0457-TML. For further information regarding this proposed TMDL implementation plan, please contact Gail Rothe, Office of Environmental Policy, Analysis, and Assessment, (512) 239-4617. Copies of the document summarizing the proposed TMDL implementation plan can be obtained via the commission's web site or by calling Joyce Spencer at (512) 239-5017.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200102581
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 8, 2001

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Notice of Non-Adjudicatory Public Hearing (TMDL)

The Texas Natural Resource Conservation Commission (TNRCC or Commission) has made available for public comment a draft implementation plan concerning legacy pollutants, chlordane, DDT, DDE, dieldrin, and polychlorinated biphenyls (PCBs), in the Trinity River and three urban lakes in Fort Worth. The TNRCC will also conduct a non-adjudicatory public hearing to receive comments on the implementation plan.

Lake Como, Fosdic Lake, Echo Lake and the Trinity River in Fort Worth are included in the State of Texas Clean Water Act, §303(d), List of impaired water bodies. As required by §303(d) of the federal Clean Water Act, Total Maximum Daily Loads (TMDLs) were developed for chlordane, DDT, DDE, dieldrin and PCBs. The TMDLs were adopted by the commission on November 17, 2000 as updates to the State Water Quality Management Plan. Upon adoption by the commission, the TMDLs were submitted to the United States Environmental Protection Agency for review and approval.

A non-adjudicatory public hearing will be held in Fort Worth, on June 13, 2001, at 7:00 p.m., at the Municipal Building, located at 1000 Throckmorton Street (2nd Floor, Pre-Council Chambers). Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the matter 30 minutes prior to the hearing and will answer questions before and after the hearing. The purpose of the public hearing is to provide the public an opportunity to comment on the proposed plan. The commission requests comment on each of the six major components of the implementation plan: Description of Control Actions and Management Measures, Legal Authority, Implementation Schedule, Follow-up Monitoring Plan, Reasonable Assurance, and Measurable Outcomes. After the public comment period, TNRCC staff may revise the implementation plan, if appropriate. The final implementation plan will then be considered for approval by the commission. Upon approval of the implementation plan by the commission, the final implementation plan and a response to public comments will be made available on the TNRCC web site at *http://www.tnrcc.state.tx.us/water/quality/tmdl*. The implementation plan is a flexible tool that the governmental and non-governmental agencies involved in TMDL implementation will use to guide their program management.

Written comments should be submitted to Joyce Spencer, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments must be received by 5:00 p.m., June 18, 2001, and should reference 2001-0438-TML. For further information regarding this proposed TMDL implementation plan, please contact John Mummert, Region 4 Office, at (817) 588-5879. Copies of the document summarizing the proposed TMDL implementation plan can be obtained via the commission's web site or by calling Joyce Spencer at (512) 239-5017.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made a far in advance as possible.

TRD-200102582
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 8, 2001

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Notice of Water Quality Applications

The following notices were issued during the period of April 24, 2001 through May 4, 2001.

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.

CITY OF ABILENE has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0023973 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 10334-004. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 18,000,000 gallons per day. The plant site is located approximately 1.5 miles north of the intersection of State Highway 351 and County Road 309, and 5 miles northeast of the intersection of Interstate Highway 20 and State Highway 351 in Jones County, Texas.

ACTON MUNICIPAL UTILITY DISTRICT has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14211-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located on the west bank of McCarty Branch approximately 2.6 miles south of the intersection of U.S. Highway 377 and Farm-to-Market Road 167 in Hood County, Texas.

ALVIN INDEPENDENT SCHOOL DISTRICT has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14238-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 650 feet north and 300 feet east of the intersection of Old Airline Road and Del Bello Road in Brazoria County, Texas.

AQUASOURCE DEVELOPMENT COMPANY a wastewater plant owner and operator, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14253-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility will be located approximately 1,200 feet southwest of the intersection of County Road 405 and State Highway 288 in Brazoria County, Texas.

BRIGHT STAR-SALEM WATER SUPPLY CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14220-001, to authorize the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 6,000 gallons per day. The facility is located 1.25 miles west of the intersection of State Highway 17 and State Highway 515, just south of State Highway 515, on the northwest border of Wood County in Wood County, Texas.

CITY OF BROWNSBORO has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0062707 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 10540-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 67,000 gallons per day. The plant site is located north of Brownsboro on the west side of Farm-to-Market Road 314 at the north end of the highway bridge over Kickapoo Creek in Henderson County, Texas.

CITY OF CELESTE has applied for a renewal of TPDES Permit No. 10146-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 94,800 gallons per day. The facility is located approximately 4000 feet west of U.S. Highway 69 and approximately one mile south-southwest of the intersection of U.S. Highway 69 and the Atchison- Topeka and Santa Fe Railway in Hunt County, Texas. The treated effluent is discharged to an unnamed tributary; thence to Cowleech Fork of the Sabine River; thence to Lake Tawakoni in Segment No. 0507 of the Sabine River Basin.

CITY OF CENTER has applied for a renewal of TNRCC Permit No. 10063-004, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 96,000 gallons per day. The facility is located north of Lake Center, approximately 3 miles south-southeast of the intersection of U.S. Highway 96 and State Highway Spur 500 in Shelby County, Texas.

CHAPEL HILL INDEPENDENT SCHOOL DISTRICT has applied to the for a renewal of TPDES Permit No. 13821-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day. The facility is located approximately 1,300 feet east of the intersection of Farm-to-Market Road 1735 and County Road SE-18 in Titus County, Texas. The sludge disposal site is located near the City of Sulphur Springs at the Commercial Disposal Systems (CDS) site in Hopkins County. The treated effluent is discharged to a drainage ditch; thence to an unnamed tributary of Williamson Creek; thence to Williamson Creek; thence to Big Cypress Creek Below Lake Bob Sandlin in Segment No. 0404 of the Cypress Creek Basin.

CITY OF COLMESNEIL has applied for a renewal of TNRCC Permit No. 11295-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 0.8 mile northwest of the intersection of U.S. Highway 69 and Farm-to-Market Road 256 in the northwest part of the City of Colmesneil in Tyler County, Texas.

CITY OF HENRIETTA has applied for a renewal of TNRCC Permit No. 10454-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 392,000 gallons per day. The facility is located approximately 1 mile northeast of the intersection of U.S. Highway 287 and State Highway Loop 510 in Clay County, Texas. The treated effluent is discharged to Dry Fork Little Wichita River; thence to the Little Wichita River in Segment No. 0211 of the Red River Basin. The unclassified receiving water uses are limited aquatic life uses for the Dry Fork Little Wichita River.

JMSC UTILITY COMPANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14264-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 3.1 miles west of Interstate Highway 45 and approximately 350 feet south of League Line Road in Montgomery County, Texas. The treated effluent is discharged via pipeline to Lake Conroe in Segment No. 1012 of the San Jacinto River Basin.

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 12920-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day via subsurface drainfields with a minimum area of 90,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located west of Ranch Road 620, approximately 2 miles north-northwest of the intersection of Ranch Road 620 and State Highway 71 in Travis County, Texas. The sludge from the treatment process may be hauled by a licensed hauler to the City of Austin's Walnut Creek WWTP, Permit No. 10543-011 to be digested, dewatered and then disposed of with the bulk of the sludge from the plant accepting the sludge. The facility and disposal site are located in the drainage basin of Barton Creek in Segment No. 1430 of the Colorado River Basin.

MAURICEVILLE SPECIAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 13839-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not

to exceed 2,200,000 gallons per day. The renewal requests to add two phases for flows less than 1,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,700,000 gallons per day. The facility is located west of State Route 87 and 300 feet north of the Sabine River Authority Canal Crossing in Orange County, Texas.

CITY OF MERCEDES has applied for a renewal of TPDES Permit No. 10347-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,300,000 gallons per day. The facility is located on both sides of and adjacent to Mile 1/2 East Road immediately south of its intersection with North 8 Mile Road in Hidalgo County, Texas.

CITY OF NORMANGEE has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0027448 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 10356-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located on Caney Creek, east of Farm-to-Market Road 39, approximately 1800 feet north of County Line Road (OSR) in Leon County, Texas.

NORTHEAST TEXAS COMMUNITY COLLEGE has applied for a renewal of TPDES Permit No. 13948-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. This application was submitted to the TNRCC on December 20, 2000.The facility is located approximately 100 yards northwest of the campus entrance on Farm-to-Market Road 1735; approximately 3-1/2 miles southeast of the intersection of Farm-to-Market Road 1735 and State Highway 49 in Titus County, Texas.

CITY OF PFLUGERVILLE has applied for a renewal of TNRCC Permit No. 11845-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,500,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The applicant is requesting authorization to compost sewage sludge at the treatment facility. The facility is located approximately 1.7 miles southeast of the City of Pflugerville and approximately 1.0 mile southeast of the intersection of Dessau Road and Farm-to-Market Road 1825 on the east bank of Gilleland Creek in Travis County, Texas.

RJS PROPERTIES, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14215-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 22,500,000 gallons per day. The proposed permit would also authorize the disposal of treated domestic wastewater via irrigation on 40 acres of a 90 acre golf course. The facility and irrigation site are located approximately 8,650 feet north and 2,000 feet west of the intersection of Farm-to-Market Road 1564 and U.S. Highway 69 in Hunt County, Texas.

SABINE VALLEY REGIONAL MENTAL HEALTH-MENTAL RETARDATION CENTER and Gregg-Harrison County Center for Mental Health and Mental Retardation Services has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0068004 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 11361-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The plant site is located on the north side of State Highway 154, approximately 5.5 miles northwest of the intersection of U.S. Highway 80 and Loop 390 in Harrison County, Texas.

SHEZY ENTERPRISES, INC. has applied for a renewal of TPDES Permit No. 11721-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,000 gallons per day. The facility is located approximately 500 feet southeast of the intersection of Interstate Highway 30 and Farm-to-Market Road 1903 and 5 miles southwest of the City of Greenville in Hunt County, Texas.

TEAL CREEK WEST INCORPORATED has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14244-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The facility is located east of and adjacent to Farm-to-Market Road 359, approximately 2.3 miles south of Interstate Highway 10 in Waller County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a major amendment to TPDES Permit No. 12024-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 5,000 gallons per day to a daily average flow not to exceed 20,000 gallons per day. The facility is located on the right-of-way of U.S. Highway 59, approximately 0.6 mile west of the City of Inez (on the southbound traffic side) in Victoria County, Texas. The treated effluent is discharged to an unnamed tributary; thence to Garcitas Creek; thence into Lavaca Bay/Chocolate Bayou (Segment No. 2453).

UNITED STATES DEPARTMENT OF THE NAVY which operates the Naval Weapons Industrial Reserve Plant McGregor, which formerly engaged in the manufacturing of solid propellant rocket motors (activities at the site currently consist of site remediation and closure), has applied for a major amendment to National Pollutant Discharge Elimination System (NPDES) Permit No. TX0034321 (corresponding to TNRCC Permit No. 02335) to authorize the addition of treated groundwater for discharge from this facility on an intermittent and flow variable basis via Outfall 001, and the removal of all other waste streams previously authorized in the existing permit. The current permit authorizes the discharge of treated process wastewater, domestic sewage, boiler blowdown, cooling water, rinse water, and storm water at a daily average flow not to exceed 200,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 1701 Bluebonnet Parkway, just west of State Highway 317, bounded on the south by Farm-to-Market Road 2671, and on the north by the St. Louis Southwestern Railway, southwest of the City of McGregor, Coryell and McLennan Counties, Texas.

CITY OF WEST has applied for a renewal of TNRCC Permit No. 10544-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The plant site is located approximately 2,000 feet northeast of the intersection of Farm-to- Market Road 2311 and Farm-to-Market Road 2114 in the City of West in Mclennan 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

CITY OF SILSBEE has applied for a major amendment to TNRCC Permit No. 10282-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 1,000,000 gallons per day to an annual average flow not to exceed 1,600,000 gallons per day. The plant site is located approximately 400 feet east and 800 feet south of the intersection of U.S. Highway 96 and Third Street in the southern portion of the City of Silsbee in Hardin County, Texas.

TRD-200102620

LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 9, 2001

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Notice of Water Rights Applications

BENJAMIN C. PAWELEK, P. O. Box 254, Falls Creek, Texas 78113, has applied to the Texas Natural Resource Conservation Commission (TNRCC) to amend Certificate of Adjudication No. 19-2183 which was issued to Benjamin C. Pawelek on July 29, 1982, and authorized the owner, with a time priority of November 7, 1940, the diversion and use of not to exceed 100 acre-feet of water per annum from a point on the west bank of the San Antonio River approximately 4 miles west of Falls City at a maximum rate of 3.34 cfs (1500 gpm) to irrigate a maximum of 80 acres of land per annum in Wilson County, Texas. Applicant seeks to amend Certificate No. 19-2183 to authorize the lease of the 100 acre-feet of water rights authorized by Certificate No. 19-2183 and by moving the diversion point and place of use approximately 25 miles downstream to the diversion point and place of use authorized by Permit No. 5368 in Karnes County, Texas owned by Arthur Ray Yanta and wife, Patsy Yanta. The amended diversion will be directly from the San Antonio River at a point on the right, or south bank, between a point bearing N 13° W, 9800 feet from the south corner of the Alexander Hunter Survey, Abstract No. 146 and a point bearing N 29° 30" E, 7750 feet from the aforesaid corner, also being Latitude 28.943° N and Longitude 97.870° W. The amended place of use for the water will those lands in the Alexander Hunter Survey, Abstract No. 146 and the William Pate Survey, Abstract No. 235 approximately 5 miles northeast of Karnes City in Karnes County as authorized by Permit No. 5368. There are twenty-five (25) water rights located between the existing and proposed diversion points in the San Antonio River Basin watershed. Notice of this application will be mailed via certified mail to each of these interjacent owners. This amendment will be junior to all water rights with diversion points in the San Antonio River watershed between the original diversion point, approximately 4 miles west of Falls City and the amended diversion point down-stream approximately 10 miles east-southeast of Falls City as they exist on the date of issuance of this amendment. It will retain its original priority with respect to all other water rights in the San Antonio River Basin. The application was received on January 14, 1999 and accepted for filing on May 21, 1999. The Executive Director of the TNRCC has reviewed the application and has declared it to be administratively complete. This notice is being sent to you as an interjacent water right holder with a diversion point on the San Antonio River between the existing diversion point and the requested diversion point. Any proposed amendment for the application by the Executive Director will include a condition that it be junior in priority to these 25 water rights on the San Antonio River between the existing and the requested diversion points.

TEXAS PARKS AND WILDLIFE DEPARTMENT, 4200 Smith School Road, Austin, Texas 78744, applicant, seeks a Water Use Permit pursuant to §11.143, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. The applicant seeks authorization to maintain an exempt on-channel dam and reservoir (pursuant to Texas Water Code §11.142) for in-place recreational use in Fort Boggy State Park. The reservoir is located on an unnamed tributary to Boggy Creek , Boggy Creek tributary, Trinity River, Trinity River Basin, in Leon County, Texas approximately 5.1 miles south of Centerville and 2.0 miles north of Leona, Texas. Station 2 + 00 on the centerline of the dam is N 27.283 E, 3,105 feet from the Southwest corner of the Manuel Skinner Original Survey No. 160, Abstract No. 27, in Leon County, Texas, also being Latitude 31.184 N, Longitude 95.976 W. The reservoir has a capacity of 90 acre-feet, a surface area of 8.7 acres, and was constructed prior to 1964. Pursuant to TAC §295.153, notice will be sent to the ten water right holders downstream of the reservoir to the coast.

Notice is given that CLIFFORD A. FAUBION, P.O. 481, Ballinger, TX 76821, applicant, seeks to amend a certificate of adjudication pursuant to Texas Water Code §11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Clifford A. Faubion, submitted Application No. 1097-A to amend Certification of Adjudication No. 14-1097 on June 1, 1999. Additional information required to process the application was received on March 13, 2000, and on April 20, 2001. The application was declared administratively complete on May 1, 2001. Certificate of Adjudication No. 14-1097 authorizes the owner to divert and use not to exceed 53 acre-feet of water from three points on Elm Creek, tributary of the Colorado River, to irrigate a maximum of 54 acres of land north of Farm to Market Road No. 53 out of a 1,088 acre tract in the Juan Jose Ximines League No. 265, Abstract No. 569 in Runnels County, Texas. Maximum authorized diversion rate is 2.67 cfs (1200 gpm). The time priority is 1954. Applicant acquired the water right authorized by Certificate of Adjudication No. 14-1097 and seeks to amend the certificate by moving the diversion point approximately 14 miles downstream on Elm Creek and by changing the place of use of the water. The proposed diversion point will be on Elm Creek at Latitude 31.71°N, Longitude 99.96°W. Land to be irrigated is located in the Alexander Lessassier Survey No. 174, Abstract No. 347 in Runnels County, Texas as recorded in Volume 376, page 191 of the Runnels County Deed Records. This notice is being sent to you as a water rights owner of record with a diversion point between the existing and proposed diversion points. Applicant is not requesting an increase in the amount of water diverted per year or in the diversion rate. The priority date of the requested amendment will be 1954, except that it will be junior in priority to all existing water rights between the current and proposed diversion points.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by May 28, 2001. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by May 28, 2001. The Executive Director may approve the application unless a written request for a contested case hearing is filed by May 28, 2001. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit your proposed adjustments to the application/permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the 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 permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, 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, 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-200102622
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 9, 2001

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Public Notice - Update of State Superfund Registry

The Texas Natural Resource Conservation Commission (TNRCC or commission) is required under the Texas Health and Safety Code, Chapter 361, Texas Solid Waste Disposal Act (the Act) to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the January 16, 1987 issue of the *Texas Register* (12 TexReg 205). Pursuant to the Act, §361.181, the commission must update the registry (state Superfund registry) annually to add new facilities in accordance with the Act, §361.184(a) and §361.188(a)(1) (see also 30 TAC §335.343) or to delete facilities in accordance with the Act, §361.189 (see also the Act, §361.183(a) and 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

Pursuant to the Act, §361.188, the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in descending order of hazard ranking system (HRS) scores are as follows.

1. Col-Tex Refinery, both sides of Business Interstate 20 (U.S. 80) in Colorado City, Mitchell County: tank farm and refinery.

2. Precision Machine and Supply, 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

3. Sonics International, Inc., north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

4. Maintech International, 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

5. Federated Metals, 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.

6. Gulf Metals Industries, on Telean Street, northeast of the intersection of Mykawa Road and Almeda-Genoa Road, Houston, Harris County: disposal of hazardous materials.

7. Texas American Oil, approximately three miles north of Midlothian on Old State Highway 67, Ellis County: waste oil recycling.

8. Niagara Chemical, west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: pesticide formulation.

9. International Creosoting, 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

10. McBay Oil & Gas, approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

11. Solvent Recovery Services, 5502 FM 521 approximately 0.2 mile south of its intersection with Highway 6, Arcola, Fort Bend County: paint solvent recycling.

12. Toups, on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating facility and municipal waste.

13. Harris Sand Pits, 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

14. JCS Company, north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

15. Jerrell B. Thompson Battery, north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

16. Aztec Ceramics, 4735 Emil Road, San Antonio, Bexar County: tile manufacturing.

17. Hayes-Sammons Warehouse, Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

18. Jensen Drive Scrap, 3603 Jensen Drive, Houston, Harris County: scrap salvage.

19. Baldwin Waste Oil Company, on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

20. Hall Street, north of intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.

21. Unnamed Plating, 6816-6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

22. Tricon America, Inc., 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

Pursuant to the Act, §361.184(a), those facilities that may pose an imminent and substantial endangerment, and which have been proposed to the state Superfund registry, are set out in descending order of HRS scores as follows.

1. Kingsland, in the vicinity of the 2100 block of Farm to Market Road 1431 and in the vicinity of the 2400 block of Farm to Market Road 1431, in the community of Kingsland, Llano County: two groundwater plumes.

2. First Quality Cylinders, 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

3. J. C. Pennco Waste Oil Service, 4927 Higdon Road, San Antonio, Bexar County: waste oil and used drum recycler.

4. ArChem/Thames Chelsea, 13103 Conklin Lane, Houston, Harris County: chemical manufacturing and recycling.

5. Crim-Hammett, 801 Highway 64, Henderson, Rusk County: open pit dumping, buried waste.

6. Phipps Plating, 305 East Grayson Street, San Antonio, Bexar County: metal plating.

7. Harkey Road, 17111 Harkey Road, Pearland, Brazoria County: residential area contaminated from waste material used for fill.

8. Pioneer Oil and Refining Company, 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

9. Voda Petroleum Inc., 211 Duncan Street, Clarksville City, Gregg County: waste oil recycling facility.

10. Force Road Oil and Vacuum Truck Company, 1722 County Road 573 (Alloy Road), approximately 1,300 feet east of the Brazoria - Fort Bend County Line, Brazoria County: oily wastewater disposal and oil recovery facility.

11. Higgins Wood Preserving, inside the bordering streets of North Timberland Drive (U.S. 59) on the west, Warren Street on the east, and Paul Avenue on the north, Lufkin, Angelina County: wood treatment.

12. Marshall Wood Preserving, 2700 West Houston Street, Marshall, Harrison County: wood treatment.

13. Thompson Hayward Chemical Company, on the east side of U.S. 277, 0.5 mile south of Munday, Knox County: pesticide formulating.

14. Avinger Development Company (ADCO), on the south side of Texas 155, approximately 1/4 mile east of the intersection with Texas 49, Avinger, Cass County: wood treatment.

15. Old Lufkin Creosoting, 1411 East Lufkin Avenue, Lufkin, Angelina County: wood treatment.

16. Materials Recovery Enterprises, about four miles southwest of Ovalo, near U.S. 83 and Farm Road 604, Taylor County: Class I industrial solid waste disposal site.

17. Harvey Industries, Inc., southeast corner of Farm Road 2495 and Texas 31 (One Curtis Mathes Drive), Athens, Henderson County: television cabinets and circuit board manufacturing.

18. Hu-Mar Chemicals, north of McGothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.

19. American Zinc, approximately 3.5 miles north of Dumas on U.S. 287 and five miles east on Farm Road 119, Moore County: zinc smelter.

20. El Paso Plating Works, 2422 Wyoming Avenue, El Paso, El Paso County: metal plating.

21. Spector Salvage Yard, Jackson Avenue and 10th Street, Orange, Orange County: military surplus and chemical salvage yard.

22. State Highway 123 PCE Plume, near intersection of State Highway 123 and Interstate Highway 35 (IH-35) in San Marcos, Hays County: contaminated groundwater plume from unknown source.

23. Kingsbury Metal Finishing, Inc., 1720 Farm-to-Market Road 1104, Kingsbury, Guadalupe County: electroplating facility. 24. Permian Chemical Company, 325 Pronto Avenue, southeast of Odessa, Ector County: chemical manufacturer.

25. Tucker Oil Refinery/Clinton Manages Oil & Refining Company, east side of U.S. Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

26. Sampson Horrice, 2000 and 2006 Plainfield Drive, Dallas, Dallas County: inactive gravel pit landfill that illegally accepted hazardous and solid waste.

27. Barlow's Wills Point Plating, south side of U.S. 80, approximately 3.4 miles east of its intersection with Texas 64, in Wills Point, Van Zandt County: inactive electroplating.

28. McNabb Flying Service, located 1.5 miles northwest of Alvin, approximately one mile east of State Highway 6, at the intersection of Brazoria County roads 146 and 539, Brazoria County: aerial pesticide applicator.

29. Stoller Chemical Company, Inc., 5200 North Columbia Street, east of the intersection of Highway 87 and Business 87, north of Plainview, Hale County: warehouse containing vats and leftover fertilizer products and an abandoned cattle trailer containing leaking drums of hazardous waste.

Since the last publication on November 24, 2000, the TNRCC has determined that five facilities, ArChem Thames/Chelsea; Harkey Road; Kingsbury Metal Finishing Inc.; State Highway 123 PCE Plume; and Voda Petroleum Inc. may pose an imminent and substantial endangerment to public health and safety or the environment and pursuant to the Act, §361.184(a), have been added to the list of sites proposed to the state Superfund registry. One site, Toups, has been determined to pose an imminent and substantial endangerment to public health and safety or the environment and pursuant to the Act, §361.188, and is hereby listed on the state Superfund registry.

To date, 20 sites: Aztec Mercury, Brazoria County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes County; Double R Plating Company, Cass County; Hagerson Road Drum, Fort Bend County; Hart Creosoting, Jasper County; Hi-Yield, Hunt County; Houston Lead, Harris County; Houston Scrap, Harris County; LaPata Oil Company, Harris County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Waste Oil Tank Services, Harris County; and Wortham Lead Salvage, Henderson County have been deleted from the state registry pursuant to the Act, §361.189 (see also the Act, §361.183(a) and 30 TAC §335.344).

The public records for each of the sites are available for inspection and copying during TNRCC business hours at the TNRCC Records Management Center, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone 1-800-633-9363, or 512-239-2920. Handicapped parking is available on the east side of Building D, convenient to access ramps that are located between Building D and Building E. Copying of file information is subject to payment of a fee.

TRD-200102590
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 8, 2001

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Update to the Water Quality Management Plan

The Texas Natural Resource Conservation Commission (TNRCC or commission) announces the availability of the draft April 2001 "Update to the Water Quality Management Plan for the State of Texas."

The Water Quality Management Plan (WQMP) is developed and promulgated pursuant to the requirements of Section 208 of the federal Clean Water Act (CWA). The draft April 2001 Update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

A copy of the draft April 2001 Update may be found on the commission's web page located at *http://www.tnrcc.state.tx.us/water/quality/wqmp*. A copy of the draft may also be viewed at the TNRCC Library located at TNRCC, Building A, 12100 Park 35 Circle, Austin, Texas.

Comments on the draft April 2001 "Update to the Water Quality Management Plan" shall be submitted to Ms. Suzanne Vargas, Texas Natural Resource Conservation Commission, Water Permits and Resource Management Division, MC-150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on June 18, 2001. For further information or questions, please contact Ms. Vargas at (512) 239-4619 or by e-mail at *svargas@tnrcc.state.tx.us*.

TRD-200102580
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 8, 2001

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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 April 30, 2001, 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 Coral Power, L.L.C. for Retail Electric Provider (REP) certification, Docket Number 24034 before the Public Utility Commission of Texas.

Applicant's requested service area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than May 25, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200102519
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 2, 2001

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Notice of Application for Amendment to Certificate of Operating Authority

On May 1, 2001, ETS Telephone Company, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its certificate of operating authority (COA) granted in COA Certificate Number 50001. Applicant intends to expand its geographic area to include the entire state of Texas.

The Application: Application of ETS Telephone Company, Inc. for an Amendment to its Certificate of Operating Authority, Docket Number 24042.

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 May 23, 2001. You may contact the PUC Customer Protection Division at (512) 936-7150. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24042.

TRD-200102525
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 2001

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 7, 2001, NOS Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60022. Applicant intends to remove the resale-only restriction.

The Application: Application of NOS Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 24070.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than May 23, 2001. 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 24070.

TRD-200102576
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 7, 2001

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 2, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of CenturyTel Solutions, LLC for a Service Provider Certificate of Operating Authority, Docket Number 24046 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance and wireless services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7150 no later than May 23, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200102526

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 3, 2001

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 4, 2001, for a service provider certificate of operating authority SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Telcom Supply, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 24062 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, Optical Services, T1-Private Line, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas comprising the Austin, Beaumont, Dallas, Hearne, Houston, Longview, and Waco Local Access and Transport Areas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than May 23, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200102575
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 7, 2001

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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 (P.U.C. or commission) of an application on May 3, 2001, for waiver of the limitation on energy efficiency incentive payments imposed by P.U.C. Substantive Rule §25.181(h)(3).

Docket Title and Number: Application of Southwestern Electric Power Company (SWEPCO) for Waiver of the Limitation on Energy Efficiency Incentive Payment Under P.U.C. Substantive Rule §25.181(h)(3). Docket Number 24052.

The Application: SWEPCO requests the commission to grant its motion for waiver of the 20% limitation imposed by §25.181(h)(3) no later than May 31, 2001. According to the affidavit of Richter L. Tipton, SWEPCO has taken significant steps to promote its Commercial and Industrial (C&I) Standard Offer Program; however, SWEPCO has received no applications for projects and no incentives have been paid to date. Further, Mr. Tipton attests that comments received from several energy service companies (ESCO) indicate that the limitation on incentives available to any one ESCO is a barrier to participation in SWEPCO's program.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 24052.

TRD-200102577
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 7, 2001

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Notice of Joint Agreement of Verizon Southwest, Inc. to Offer Extended Area Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (P.U.C. or commission) of a joint agreement on April 23, 2001, seeking approval of two-way, mandatory, Extended Area Service between the San Angelo and Sonora Exchanges, pursuant to P.U.C. Substantive Rule §26.217.

Project Title and Number: Joint Petition of Verizon Southwest, Inc., and Governmental Representatives to Provide Two-Way, Non-Optional, Extended Area Service (EAS) between the San Angelo Exchange and the Sonora Exchange, Pursuant to P.U.C. Substantive Rule §26.217(b)(8), Project Number 24009.

The Joint Petition and Agreement: The proposed plan is a two way, mandatory, extended area service offering to which Verizon Southwest's residence and business local exchange customers within the San Angelo and Sonora exchanges will be able to call within the designated calling area for a monthly, flat rate.

The joint applicants have requested that the joint agreement filing be processed administratively pursuant to P.U.C. Substantive Rule §26.217(b)(8). Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 by March 26, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7003.

TRD-200102535
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 2001

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on March 30, 2001, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Waterwood Exchange for Expanded Local Calling Service, Project Number 23886.

The petitioners in the Waterwood Exchange request ELCS to the exchanges of Cold Spring, Livingston, Onalaska, and Point Blank.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at

(512) 936-7120 no later than June 1, 2001. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200102568
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 7, 2001

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on April 2, 2001, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Newton Exchange for Expanded Local Calling Service, Project Number 23891.

The petitioners in the Newton Exchange request ELCS to the exchanges of Buna, Deweyville, and Silsbee.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than June 1, 2001. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200102569
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 7, 2001

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Public Notice of Amendment to Interconnection Agreement

On May 1, 2001, Level 3 Communications, LLC and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24041. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24041. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 31, 2001, 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 24041.

TRD-200102536
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 2001

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Public Notice of Amendment to Interconnection Agreement

On May 1, 2001, Southwestern Bell Telephone Company and IP Communications Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24045. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24045. As a part of the comments, an interested person may request

that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 31, 2001, 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 24045.

TRD-200102537
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 2001

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Public Notice of Amendment to Interconnection Agreement

On May 2, 2001, Southwestern Bell Telephone Company and Brazos Global Communications, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24049. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24049. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 31, 2001, 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 24049.

TRD-200102538
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 2001

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Public Notice of Amendment to Interconnection Agreement

On May 2, 2001, Southwestern Bell Telephone Company and El Paso Networks, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24050. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24050. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 31, 2001, 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 24050.

TRD-200102539
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 2001

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Public Notice of Amendment to Interconnection Agreement

On May 2, 2001, Southwestern Bell Telephone Company and Personal Touch, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24051. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24051. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 31, 2001, 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 24051.

TRD-200102540
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 2001

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Public Notice of Collocation Compliance Tariffs

On May 4, 2001, Southwestern Bell Telephone Company, AT&T Communications of Texas, L.P., WorldCom Communications, Inc. and the CLEC Coalition, collectively referred to as applicants, filed joint physical and virtual collocation compliance tariffs pursuant to Sections 251 and 252 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 2001) (PURA). The collocation tariffs were filed pursuant to the revised arbitration award issued in *Proceeding to Establish Permanent Rates for Southwestern Bell Telephone Company's Revised Physical and Virtual Collocation Tariffs*. The application has been designated Docket Number 21333. The arbitration award and the underlying collocation tariffs are available for public inspection at the commission's offices in Austin, Texas.

The commission finds that public comment should be allowed before the commission issues a final decision approving or rejecting the collocation tariffs. Any interested person may file written comments on the collocation tariffs by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21333. The comments shall be filed by May 23, 2001, 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 proceeding. 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 collocation tariffs 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 21333.

TRD-200102603
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2001

♦ ♦ ♦

Public Notice of Interconnection Agreement

On May 4, 2001, Southwestern Bell Telephone Company and A-Tech Telecom, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24069. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 24069. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 5, 2001, 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 24069.

TRD-200102586
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2001

♦ ♦ ♦

Public Notice of Workshop on Pulse Metering and Request for Comments

The Public Utility Commission of Texas (commission) will hold a workshop regarding pulse metering, on Wednesday, May 30, 2001, at 9:30 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 23952, *Rulemaking Concerning Pulse*

Metering, has been established for this proceeding. Interested persons are requested to file strawman draft rule language no later than May 21, 2001 and to provide an electronic copy of the language to Shawnee Claiborn-Pinto by email at shawnee.claiborn-pinto@puc.state.tx.us. Persons who wish to file comments on the draft rule language submitted by any party may obtain a copy of the filed strawman language from Central Records. They will also be made available on the Project Number 23952 website no later than May 22, 2001. The strawman language will provide the basis for the workshop discussions.

It is requested that any written comments to the strawman draft rule language be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by 3:00 p.m. Friday, May 25, 2001. All comments should reference Project Number 23952.

Questions concerning the workshop or this notice should be referred to Shawnee Claiborn- Pinto, Electric Division, (512) 936-7388. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200102579
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2001

♦ ♦ ♦

Texas Workforce Commission

State Plan for Child Care and Development Fund Services (Correction of Error)

Public Hearings will be held on the following dates and corrected times to provide the public an opportunity to comment on the provision of child care services under the plan proposed in the April 27, 2001 issue of the *Texas Register*.

June 4, 2001

1:00 p.m.

North Central Workforce Board

616 Six Flags Drive/Second Floor Board Room

Arlington, Texas

June 5, 2001

9:00 a.m. (Immediately following Commission Meeting)

Texas Workforce Commission

101 East 15th Street, Room 244

Austin, Texas

June 6, 2001

1:00 p.m.

Holiday Inn - San Angelo

441 Rio Concho Drive/Section of the Ballroom

San Angelo, Texas

June 7, 2001

1:00 p.m.

Gulf Coast Workforce Board

3555 Timmons Lane/Second Floor, Conference Room A

Houston, Texas

Policies regarding child care that will be established by local workforce development boards (Boards) for the respective local areas will be established by the Boards for the respective local workforce development areas during open meeting processes which will permit public comment.

TRD-200102592
John Moore
Assistant General Counsel
Texas Workforce Commission
Filed: May 8, 2001

♦ ♦ ♦

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 (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/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 ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 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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