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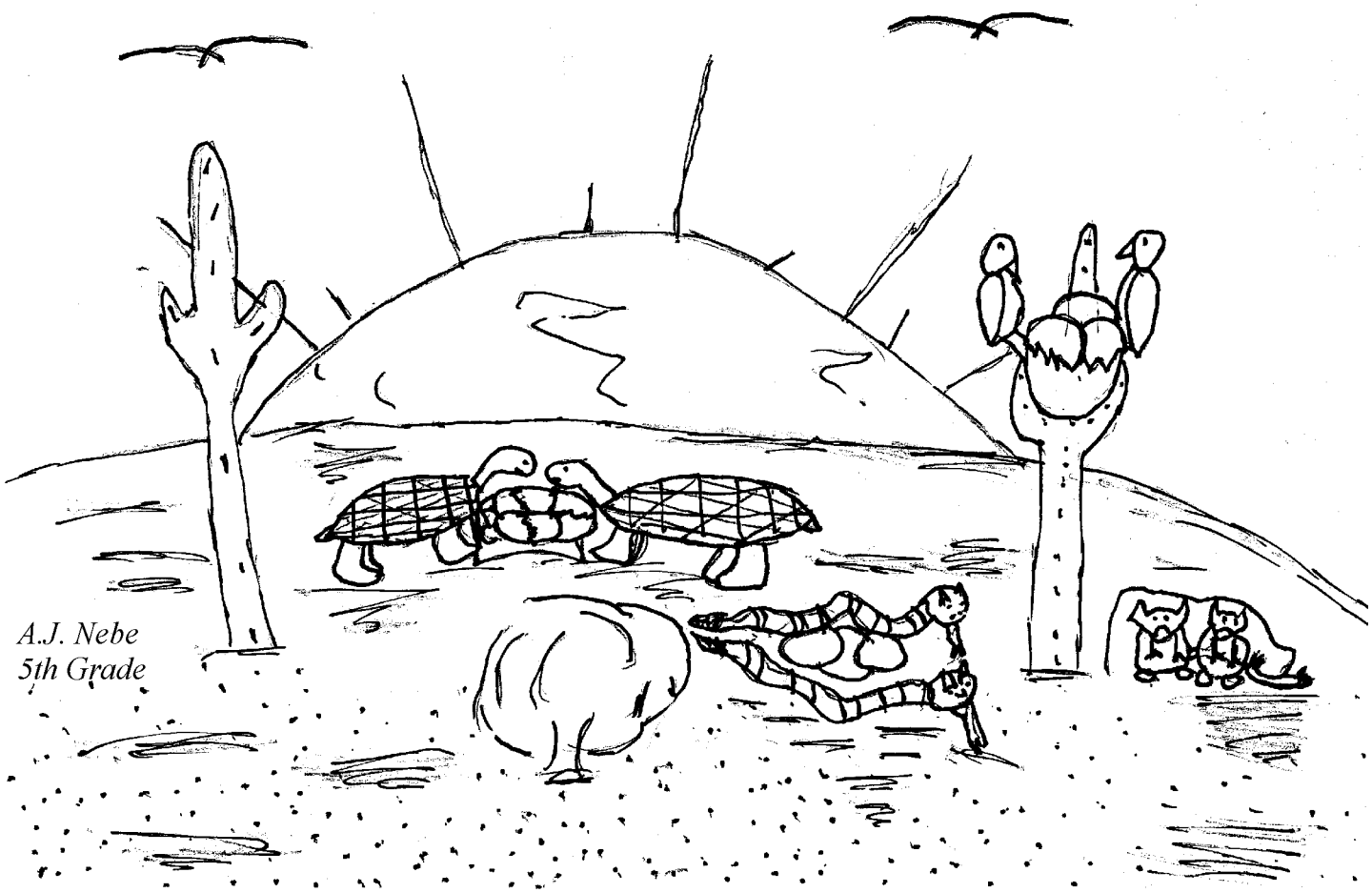

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

The artwork featured on the front cover is chosen at random. Inside each issue, 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*.

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ATTORNEY GENERAL

PROPOSED RULES

WITHDRAWN RULES

ADOPTED RULES

EXEMPT FILINGS

Texas Department of Insurance

RULE REVIEW

Agency Rule Review Plans--Revised

Proposed Rule Review

Adopted Rule Review

IN ADDITION

Comptroller of Public Accounts

Office of Consumer Credit Commissioner

Texas Education Agency

Texas Commission on Environmental Quality

Texas Ethics Commission

Texas Department of Health

Texas Higher Education Coordinating Board

Texas Department of Housing and Community Affairs

Houston-Galveston Area Council

Texas Department of Insurance

Texas Lottery Commission

Manufactured Housing Division

North Central Texas Council of Governments

Public Utility Commission of Texas

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 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-0559

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

Re: Whether the Texas Department of Insurance is authorized to examine certain nonprofit health corporations under Insurance Code articles 20A.17 and 20A.18C (RQ-0534-JC)

S U M M A R Y

A nonprofit health corporation certified by the Texas Board of Medical Examiners is a physician for purposes of the Health Maintenance Organization Act, chapter 20A of the Texas Insurance Code. See Tex. Ins. Code Ann. art. 20A.02(r)(2) (Vernon Supp. 2002). Article 20A.17 of the Insurance Code authorizes the Texas Department of Insurance to examine health maintenance organizations. In connection with the examination of a health maintenance organization, the Department is authorized to examine records of a nonprofit health corporation, with which the health maintenance organization has a contract, that are "relevant to its relationship with the health maintenance organization." Id. art. 20A.17(b)(1). The Department's authority to examine a nonprofit health corporation under article 20A.17 depends only on whether the health maintenance organization has a contract with the nonprofit health corporation and does not depend on whether the nonprofit health corporation provides only medical care or is paid on a prospective basis under the contract. The Department's authority to examine medical, hospital, and health records is limited to examinations of health maintenance organizations concerning the quality of health care services. See id. art. 20A.17(a), (b)(3).

Article 20A.18C of the Insurance Code regulates health maintenance organizations' delegation of regulated functions. Under article 20A.18C, as enacted in 1999, the Department's authority with respect to a delegated network depends on the health maintenance organization first providing the delegated network with written notice and an opportunity to respond and then requesting the Department to intervene. The Department's intervention authority is not limited to the issues raised in the health maintenance organization's written notice. A nonprofit health corporation may fall within the statutory definition of a "delegated network" and may be subject to examination by the Department as a delegated network, if the health maintenance organization requests the Department to intervene. This examination could include the nonprofit health corporation's financial condition. The Department's authority under article 20A.17 to examine the records of a nonprofit health corporation is independent of the Department's authority under article 20A.18C and does not require a health maintenance organization's request for intervention.

Opinion No. JC-0560

The Honorable Steven D. Wolens, Chair, House Committee on State Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether the Public Information Act provides for sanctions against an electricity market participant for filing with the Office of the Attorney General groundless claims of confidentiality as to its records held by the Public Utility Commission that are requested under the Act (RQ-0536-JC)

S U M M A R Y

The legislature has not authorized any agency, including the Office of the Attorney General, to impose sanctions pursuant to the Public Information Act on a third party for filing "groundless and frivolous claims of confidentiality solely to impede public disclosure of information."

For information regarding this publication, please access the website at www.oag.state.tx.us *or call the Opinion Committee at 512-463-2110.*

TRD-200206517
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: October 9, 2002

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Request for Opinions

RQ-0608

The Honorable Michael A. Stafford, Harris County Attorney, 1019 Congress, 15th Floor, Houston, Texas 77002-1700

Re: Whether Harris County may participate in the design and construction of a bridge from Galveston Island to Point Bolivar (Request No. 0608-JC)

Briefs requested by November 2, 2002

RQ-0609

The Honorable Jeb McNew, Montague County Attorney, P.O. Box 336 Montague, Texas 76251-0336

Re: Whether an inmate of a county jail has a right to choose a medical provider while in custody, and related questions (Request No. 0609-JC)

Briefs requested by November 2, 2002

RQ-0610

The Honorable Dib Waldrip, Comal County Criminal District Attorney, 150 North Seguin, Suite 307, New Braunfels, Texas 78130

Re: Time at which a vacancy is created under the terms of section 22.010(d) of the Local Government Code in a type A general law municipality (Request No. 0610-JC)

Briefs requested by November 9, 2002

RQ-0611

The Honorable Michael A. Stafford, Harris County Attorney, 1019 Congress, 15th Floor Houston, Texas 77002-1700

Re: Whether section 550.065(d) of the Transportation Code requires a governmental body to use the guidelines established by the General Services Commission when calculating the 'actual cost' of making a copy of a non-certified copy of an accident report (Request No. 0611-JC)

Briefs requested by November 9, 2002

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

TRD-200206516
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: October 9, 2002

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER F. GENERAL REIMBURSEMENT METHODOLOGY FOR ALL MEDICAL ASSISTANCE PROGRAMS

1 TAC §355.791, §355.792

The Health and Human Services Commission (HHSC) proposes new §355.791, concerning reporting costs by TxHmL program providers, and §355.792, concerning reimbursement methodology for the TxHmL program.

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.

Explanation

New §355.791 describes how providers in the Texas Department of Mental Health and Mental Retardation's (TDMHMR) new Texas Home Living (TxHmL) Program will report costs. New §355.792 describes how HHSC will establish rates for the TxHmL Program.

The TxHmL Program is responsive to Executive Order RP 13 issued by Governor Rick Perry on April 18, 2002, that directs the HHSC to work with TDMHMR to develop a new "selected essential services waiver" using existing general revenue funds that will serve individuals with mental retardation on the TDMHMR waiting list for Medicaid waiver program services. The new waiver program is intended to refinance certain general revenue funded services provided by local mental retardation authorities (MRAs) to individuals with mental retardation. The general revenue made available through gaining federal matching funds will enable TDMHMR to create additional placements in the program for some of the individuals now registered on the waiting lists for the Home and Community-based Services (HCS) Program and the Mental Retardation Local Authority (MRLA) Program.

Fiscal Note

Don Green, Chief Financial Officer, has determined that for each year of the first five years the proposed new sections are in effect, enforcing or administering the sections does not have foreseeable implications relating to cost or revenues of state or local government.

Small and Micro-business Impact Analysis

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

Public Benefit

Steve Lorenzen, Director of Rate Analysis, has determined that during the first five years that the proposed new sections are in effect, the public benefit expected will be the use of Medicaid funds to serve individuals whose names are on the waiver waiting list and individuals whose services currently are funded with general revenue.

Regulatory Analysis

HHSC has determined that neither of the proposed new sections 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 new sections 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 new sections under Texas Government Code, §2007.043. HHSC has determined that this action does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking. The proposed new sections 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 1:30 p.m., Friday, October 25, 2002, in the TDMHMR 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 TDMHMR 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 the TDMHMR Office of Medicaid Administration, at least

72 hours prior to the hearing at (512) 206-5349 or at the TDY phone number of Texas Relay, 1-800-735-2988.

Public comment may be submitted in writing to Mary Ann Roberts, Manager, HHSC Medicaid Rates and Analysis, Health and Human Services Commission, by mail to P.O. Box 13247, Austin, Texas 78711, or by fax to (512) 685-3113. Comments must be submitted within 30 days of publication of this notice. Further information may be obtained by calling Mary Ann Roberts at (512) 685-3114.

Statutory Authority

The new sections 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 new sections 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.

§355.791. Reporting Costs by TxHmL Program Providers.

(a) Submission of cost reports. On an annual basis, Texas Home Living (TxHmL) Program providers must submit Full Cost Reports as directed by the Health and Human Services Commission (HHSC) or its designee in accordance with §§355.701 - 355.709 of this title (relating to General Reimbursement Methodology for All Medical Assistance Programs).

(1) "Direct service costs" are defined in §355.708(c)(3) of this title (relating to Allowable and Unallowable Costs). For purposes of this section, direct service costs include:

(A) costs associated with personnel who provide direct hands-on support for consumers and include personnel such as:

(i) direct care workers;

(ii) first-level supervisors of direct care workers;

(iii) registered nurses;

(iv) licensed vocational nurses; and

(v) other personnel who provide activities of daily living training and clinical program services; and

(B) costs related to:

(i) wage rates;

(ii) benefits;

(iii) payroll taxes;

(iv) contracts for direct services; and

(v) direct service supervision information; and

(C) accrued leave (sick or vacation) if the TxHmL Program provider has implemented a written policy that entitles an employee to the cash value of accrued leave upon termination.

(2) For staff whose duties include work other than the provision of direct services, the proportion of work that is spent on direct services may be included in the direct service costs.

(A) The proportion of their salary and benefits that is compensation for direct services work can be included in the direct service cost report only to the extent that the salary and benefits for this direct service work must be the lesser of the actual wages and benefits or the wages and benefits for a comparable direct care worker assumed in the model.

(B) The TxHmL Program provider must have a procedure in place that specifies how direct service work time is allocated.

(3) TxHmL Program providers must report the following information in the Full Cost Report:

(A) direct service costs related to the delivery of direct services including, but not limited to community support services, supported employment, and the direct supervision of the delivery of these services; and

(B) indirect costs including but not limited to facility operating and administrative costs.

(4) These direct service costs and indirect costs may be either the TxHmL Program provider's actual expense or contracted expenditures.

(b) Record keeping requirements.

(1) A TxHmL Program provider must:

(A) retain records according to HHSC's requirements;

(B) ensure that records are accurate and sufficiently detailed to provide the legal, financial, and statistical information requested by HHSC; and

(C) maintain all work papers and any other records that support the information submitted on the Full Cost Reports relating to all allocations, cost centers, cost or statistical line items, surveys, and schedules.

(2) HHSC may require supporting documentation other than that contained in the cost report to substantiate reported information.

(3) A TxHmL Program provider must maintain the following documentation, at a minimum, relating to compensation of each owner or related party:

(A) a detailed written description of actual duties, functions, and responsibilities;

(B) documentation substantiating that the services performed are not duplicative of services performed by other employees;

(C) time sheets or other documentation verifying the hours and days worked;

(D) the amount of total compensation paid for these duties, with a breakdown detailing regular salary, overtime, bonuses, benefits, and other payments;

(E) documentation of regular, periodic payments and/or accruals of the compensation;

(F) documentation that the compensation is subject to payroll or self-employment taxes; and

(G) a detailed allocation worksheet indicating how the total compensation was allocated across business components receiving the benefit of these duties.

(4) A TxHmL Program provider must maintain clearly defined bonus policies in its written agreements with employees or in its overall employment policy.

(A) At a minimum, the bonus policy must include the basis for distributing the bonuses including qualifications for receiving the bonus, and how the amount of each bonus is calculated.

(B) Other documentation must specify who received bonuses, whether the persons receiving bonuses are owners, related parties, or arm's-length employees, and the bonus amount received by each individual.

(5) A TxHmL Program provider must maintain clearly defined benefit policies in its written agreements with employees or in its overall employment policy. At a minimum, the documentation must include:

(A) the basis for eligibility for each type of benefit available;

(B) who is eligible to receive each type of benefit;

(C) who actually receives each type of benefit;

(D) whether the persons receiving each type of benefit are owners, related parties, or arm's-length employees; and

(E) the amount of each benefit received by each individual.

(6) A TxHmL Program provider must maintain documentation for each employee that clearly identifies each compensation component, including regular pay, overtime pay, incentive pay, mileage reimbursements, bonuses, sick leave, vacation, other paid leave, deferred compensation, retirement contributions, TxHmL Program provider-paid instructional courses, health insurance, disability insurance, life insurance, and any other form of compensation.

(A) Types of documentation would include insurance policies, TxHmL Program provider benefit policies, records showing paid leave accrued and taken, documentation to support hours (regular and overtime) worked and wages paid, and mileage logs or other documentation to support mileage reimbursements and travel allowances.

(B) For accrued benefits, the documentation must clearly identify the period of the accrual. For example, if an employee accrues two weeks of vacation during 20X1 and receives the corresponding vacation pay during 20X3, that employee's compensation documentation for 20X3 should clearly indicate that the vacation pay received had been accrued during 20X1.

(c) Noncompliance with record keeping requirements. Failure to maintain accurate records is a violation of the TxHmL Program provider contract, and will result in HHSC notifying TDMHMR to place the TxHmL Program provider and all waiver contracts on vendor hold.

(d) Allowable and unallowable costs. A TxHmL Program provider must complete Full Cost Reports in accordance with HHSC's rules, regulations, and instructions.

(e) Cost certification. A TxHmL Program provider must certify the accuracy of cost reports submitted to HHSC. A TxHmL Program provider may be liable for civil and/or criminal penalties if the cost report is not completed according to HHSC requirements.

(f) Due date. A TxHmL Program provider must submit Full Cost Reports no later than 90 days after the reporting period or 90 days after the date that HHSC mails the form to the TxHmL Program provider, whichever is later.

(g) Extension of due date. HHSC may grant extensions of due dates for good cause. Good cause is defined as a causal factor that the TxHmL Program provider could not reasonably be expected to control. A TxHmL Program provider must submit a request for an extension in writing to HHSC before the cost survey or Full Cost Report due date. HHSC will respond to a request for extension within 15 business days of its receipt.

(h) Cost data. HHSC may at times require additional financial and statistical information to assess the fiscal integrity of the TxHmL Program. A TxHmL Program provider must submit additional information to HHSC upon request, unless the information is not subject to the TxHmL Program provider's control.

(i) Failure to submit requested data. Failure to submit acceptable cost data by the due date constitutes a violation of the TxHmL Program provider contract and may result in HHSC notifying TDMHMR to place the TxHmL Program provider and all waiver contracts on vendor hold.

(j) Review of cost data. HHSC reviews each TxHmL Program provider's cost data to determine whether the financial and statistical information submitted conforms to all applicable rules and instructions. Forms that are not completed according to HHSC's instructions or rules may be returned to the TxHmL Program provider for proper completion.

(k) On-site financial audits. HHSC performs a sufficient number of on-site financial audits to assess the fiscal integrity of the TxHmL Program. The number of on-site audits performed may vary.

(l) On-site financial audit standards. HHSC or its designee performs on-site financial audits in a manner consistent with the Government Auditing Standards issued by the United States Comptroller General.

(m) Access to records. Each TxHmL Program provider must allow access by HHSC or its authorized representatives to any and all records necessary to verify cost data submitted to HHSC.

(1) This requirement includes records pertaining to related-party transactions and other business activities engaged in by the TxHmL Program provider that are directly or indirectly related to the provision of contracted services.

(2) Failure to allow inspection of pertinent records within 10 working days following written notice from HHSC constitutes a violation of the TxHmL Program provider contract.

(3) If the administrative office or other entity pertaining to a multi-contract operation refuses access to records, then the penalties are extended to all of the TxHmL Program provider's entities having Medicaid contracts with TDMHMR.

(4) Additional rules regarding access to records that are out-of-state may be found in §355.703 of this title (relating to Basic Objectives and Criteria for Review of Cost Reports).

(n) Reviews of exclusions or adjustments. An TxHmL Program provider who disagrees with HHSC's exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, an administrative hearing as specified in §355.707 of this title (relating to Reviews and Administrative Hearings).

(o) Notification of exclusions and adjustments. HHSC will notify a TxHmL Program provider of exclusions and any adjustments, including caps applied, to reported costs in accordance with §355.705 of this title (relating to Notification).

§355.792. Reimbursement Methodology for the TxHmL Program.

(a) HHSC determines reimbursement rates according to §§355.701 - 355.709 of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs).

(b) Payment rate determination. For the initial reimbursement period, beginning the effective date of the Center for Medicare and Medicaid Services (CMS) approval of the waiver, payment rates are those rates determined for other Medicaid programs with similar services. When payment rates are not available from other Medicaid programs with similar services, payment rates are determined on a pro forma approach in accordance with §355.702(i) of this title (relating to Method for Cost Determination).

(c) Payment rates for TxHmL services in effect for the initial reimbursement period will remain in effect until HHSC obtains sufficient reliable cost data to determine new payment rates.

(d) HHSC will determine reimbursement rates at least bi-annually.

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 October 7, 2002.

TRD-200206452
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: November 17, 2002
For further information, please call: (512) 424-6576

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER FF. CREDIT LIFE AND ACCIDENT AND HEALTH INSURANCE

DIVISION 11. POLICY AND CLAIMS RESERVES

28 TAC §3.6101

The Texas Department of Insurance proposes an amendment to §3.6101 concerning policy reserves. The proposed amendment is necessary to implement Texas Insurance Code Art. 3.28, §3(h). Subsection (h) was added to Art. 3.28, §3 by Acts 2001, 77th Legislature in House Bill (HB) 2159. That subsection addresses minimum reserve requirements applicable to credit life policies and certificates issued under Insurance Code Art. 3.53 and provides that reserve requirements for payment of benefits are met if, in aggregate, the reserves are maintained at 100% of the 1980 Commissioner's Standard Ordinary (CSO) Mortality Table, with interest not to exceed 5.5%.

Prior to the enactment of HB 2159, §3.6101 provided minimum reserves applicable to credit life insurance policies and certificates for premium refunds and payment of benefits to be at 130% of the reserves computed on the 1958 CSO Mortality Table with interest not to exceed 5.5%; or at 100% of the reserves computed on the 1941 CSO Mortality Table, with interest not to exceed 5.5%; or at 100% of the reserves computed on the 1958 Commissioner's Extended Term (CET) Mortality Table, with interest not to exceed 5.5%; or at 150% of the reserves computed on the 1980 CSO Mortality Table, with interest not to exceed 5.5%.

The proposed amendment continues to allow the use of any of those minimum credit life reserve levels. However, the proposed amendment also includes the proviso that notwithstanding other law, the minimum reserve requirements applicable to credit life policies and certificates are met if, in aggregate, the reserves are maintained at 100% of the 1980 CSO Mortality Table, with interest not to exceed 5.5%. The proposed amendment makes clear that the policy reserves must not, in aggregate, be less than the premium refund liability, which may include consideration of commission, premium tax and other expenses recoverable.

Betty Patterson, Senior Associate Commissioner, Financial Program, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the amendment. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Patterson has also determined that for each of the first five years the proposed amendment will be in effect, the public benefits anticipated as a result of the amendment will be greater consistency in reserve requirements for credit life insurance and greater flexibility for insurers to establish reserves appropriate for their business. Use of this proposed amendment is also anticipated to result in less surplus strain for insurers in sales of single premium credit life business.

Any costs to insurers complying with the amended section each year of the first five years the proposed amendment will be in effect are the result of the legislative enactment of Subsection (h), Art. 3.28 of the Insurance Code, and not a result of the adoption and implementation of this proposal. The proposal allows insurers to reduce the premium refund liability with commissions, premium tax and other expenses recoverable, and the work undertaken to calculate the amount by which the premium refund liability could be reduced in this manner would be a cost. However, that calculation is not required by the proposal.

It is the department's position that adoption of the proposed amendment will have no adverse effect on small or micro businesses. The proposal makes additional options available to credit life insurers in meeting minimum reserves for credit life insurance, thus increasing flexibility but requiring no change. Waiver or modification of the amendment for small or micro businesses is therefore not appropriate.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on Monday, November 18, 2002, to Gene C. Jarmon, Acting General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Mike Boerner, Managing Actuary, Actuarial Division, Financial Program, Mail Code 302-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code Article 3.28 and §36.001. Article 3.28(h) provides that, notwithstanding

any other law, the minimum reserve requirements for payment of benefits applicable to credit life policies and certificates issued under Article 3.53 are met if, in aggregate, the reserves are maintained at 100% of the 1980 CSO Mortality Table, with interest not to exceed 5.5%. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance as authorized by statute.

The following article is affected by this proposal: Insurance Code Art. 3.28

§3.6101. Policy Reserves.

(a) Except as provided in §3.6102 of this title (relating to Claims Reserves), the minimum reserves for premium refunds required by these rules and the payment of benefits under outstanding credit life insurance policies and certificates may not be less in the aggregate than 130% of the reserves computed on the 1958 CSO Mortality Table with interest not to exceed 5.5%; or, at the option of the company, such reserves may be maintained at 100% of the reserves computed on the 1941 CSO Mortality Table or the 1958 CET Mortality Table with interest not to exceed 5.5%; or 150% of the 1980 CSO Mortality Table with interest not to exceed 5.5%; provided, however, notwithstanding any other law or rule, the minimum reserve requirements for policy reserves applicable to credit life policies and certificates issued under Article 3.53 of the Insurance Code or these rules are met if, in aggregate, the reserves are maintained at 100% of the 1980 CSO Mortality Table, with interest not to exceed 5.5%. Such policy reserves, in aggregate, must not be less than the premium refund liability, which may include consideration of commission, premium tax, and other expenses recoverable.

(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 October 4, 2002.

TRD-200206434
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: November 17, 2002
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (commission) proposes an amendment to §330.4, Permit Required; and new §330.75, Animal Crematory Facility Design and Operational Requirements for Permitting by Rule.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In accordance with 1 TAC §91.65, regarding the procedures for filing rule packages with the Texas Register, a rule shall only have one pending amendment at a time with the exception of rules containing only definitions. Therefore, to comply with this requirement, this proposed rulemaking combines two separate solid waste provisions that require an amendment to §330.4. The rule subjects are animal crematories and pet cemeteries.

The purpose of the first part of the proposed rulemaking is to make clear the commission position on permit requirements regarding the management of municipal solid waste (MSW) for animal crematories. Under Texas Health and Safety Code (THSC), §361.003(20), Definitions, dead animals are included in the definition of MSW. Section 330.4 prohibits the storage, processing, removal, or disposal of MSW unless such activity is authorized by a permit or other authorization. The proposed rulemaking would provide authorization via a permit by rule for small animal crematories. The requirement to obtain a full MSW permit could be overly burdensome for small facilities, and the authorization level should be set at a lower authorization tier. The amount and type of waste authorized to be processed at these facilities poses less risk than some other MSW facilities. The maximum daily storage and processing limits are proposed to minimize the likelihood that nuisance conditions will occur at these facilities. Small animal crematories would be authorized to operate via a permit by rule if they follow certain requirements. In addition to the MSW permit by rule, these facilities must also comply with all air quality rules and obtain all appropriate air quality permits. Thus, animal crematories must be authorized in accordance with the new source review (NSR) permitting requirements in 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification or qualify for a permit by rule under 30 TAC §106.494, Pathological Waste Incinerators, prior to construction or modification.

The purpose of the second part of the proposed rulemaking is to make clear the commission position on permit requirements with regard to the management of MSW for pet cemeteries. Pet cemeteries do not need to be regulated as landfills, although the current rules could be interpreted as requiring permits for these facilities. Pet cemeteries pose less risk both because of the amount and type of waste disposed and the spatial distribution of the burials. Although dead animals are MSW, which generally requires an authorization under §330.4(a) for disposal, the proposed rulemaking would clearly state that pet cemeteries do not require MSW authorizations and must only comply with timely burial and deed recordation requirements.

The purpose of these proposed rules is to implement THSC, §361.061 and §361.024(a) and (e).

SECTION BY SECTION DISCUSSION

Section 330.4 is proposed to be amended by making changes in some existing subsections and by adding two new subsections. The name of the commission and citations are updated where needed throughout the section. Grammatical and formatting changes are made for clarity where needed throughout the section, and the acronym "MSW" is substituted for the term "municipal solid waste" throughout the section for conciseness. In §330.4(a), the list of subsections is deleted to clarify that all exclusions in the section apply and offset the prohibition against disposing, processing, storing, or removing MSW without an authorization from the commission. New §330.4(z) would grant an MSW permit by rule for animal crematory facilities that meet certain requirements. New §330.4(aa) would state that an MSW authorization is not required for pet cemeteries, although deed recordation requirements would apply. New §330.75 proposes the requirements which must be met to operate an animal crematory under an MSW permit by rule. One requirement is the storage of animal carcasses under refrigeration if not cremated within one hour of receipt. The commission is proposing that

the storage temperature should be 40 degrees Fahrenheit, but invites comments on this specific issue as well as all other aspects of this proposal.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state or local government due to administration and enforcement of the proposed rules.

The proposed rulemaking is intended to clarify and supplement existing commission MSW rules regarding animal crematory and pet cemetery permitting. The proposed rules would provide authorization via an MSW permit by rule for small animal crematories and an exemption from MSW permitting for pet cemeteries. Additionally, animal crematories are still subject to the NSR permitting requirements in Chapter 106 or Chapter 116. The commission does not anticipate any significant fiscal implications due to implementation of the proposed rules.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of implementing the proposed rules will be clarification of existing rules.

The proposed rulemaking is intended to amend commission MSW rules regarding animal crematory and pet cemetery permitting. This proposed rulemaking does not change air permitting requirements. The commission does not anticipate any significant fiscal implications due to implementation of the proposed rules.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses due to implementation of the proposed rules, which are intended to amend commission MSW rules regarding animal crematory and pet cemetery permitting. This proposed rulemaking does not change air permitting requirements. The commission does not anticipate any significant fiscal implications due to implementation of the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). A "major environmental rule" is a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed rulemaking is intended to clarify the MSW regulatory scheme regarding animal crematories and pet cemeteries. Whereas the existing rules subject animal crematories to full permitting requirements as Type V MSW processing facilities, the proposed rules would authorize smaller facilities via a permit by rule, a less formal authorization process which would still provide substantive protection of public health and the environment. The proposed framework for regulating animal crematories is specifically tailored to provide the appropriate level of regulation while avoiding excessive burdens on the facilities. The proposed rules also clarify that pet cemeteries are not subject to MSW permitting requirements. This proposed rulemaking does not change air permitting requirements. Animal crematories are still subject to the NSR permitting requirements in Chapter 116 or Chapter 106.

This rulemaking is not a major environmental rule because it is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking applies only to a limited group of facilities and clarifies the regulations which are protective of human health and the environment.

As to the four applicability requirements, the rulemaking does not exceed a standard set by federal law; exceed an express requirement of state law; exceed a requirement of any delegation agreement or contract between the state, the commission, and an agency or representative of the federal government; nor are the rules proposed solely under the general powers of the agency.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this rulemaking under Texas Government Code, §2007.043. The purpose of the animal crematory proposed rulemaking is to make clear the commission position on permit requirements for animal crematories regarding the management of MSW. Under THSC, §361.003(20), dead animals are included in the definition of MSW. Section 330.4 prohibits the storage, processing, removal, or disposal of MSW unless such activity is authorized by a permit or other authorization. The proposed rules would provide authorization via an MSW permit by rule for small animal crematories. The requirement to obtain an MSW permit could be overly burdensome for small animal crematory facilities. The authorization level for small animal crematory facilities should be a lower authorization tier than that of a full MSW permit. Animal crematories are still subject to the NSR permitting requirements in Chapter 116 or Chapter 106.

The purpose of the pet cemetery rulemaking is to make clear that no MSW permit or registration is required for pet cemeteries. Under THSC, §361.003(20), dead animals are included in the definition of MSW. Section 330.4 prohibits the storage, processing, removal, or disposal of MSW unless such activity is authorized by a permit or other authorization. The proposed rule would clearly state that pet cemeteries are exempt from all MSW authorization requirements.

The rulemaking will substantially advance the stated purposes by clarifying the rules and providing specific provisions on the aforementioned matters. Promulgation and enforcement of the rules will not burden or affect private real property. Promulgation and enforcement of these proposed rules would be neither

a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's right in private real property because this rulemaking does not burden, nor restrict or limit the owner's right to property, and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations.

In addition, because the subject proposed rules are less stringent than existing rules, they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rules would not prohibit the activities involved, but rather would clarify the regulatory requirements. Therefore, these rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), Actions and Rules Subject to the Texas Coastal Management Program, since this rulemaking affects provisions for certain permits that could be issued by the commission. The Coastal Coordination Act requires that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission determined that the proposed rules are in accordance with 31 TAC §505.22, and found that the proposed rulemaking is consistent with the applicable CMP goals and policies.

The goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests. The policies of the CMP in 31 TAC §501.14 implement these goals.

The specific CMP policies applicable to these proposed rules require that rules governing permits shall require systems that are permitted by the commission to be located, designed, and operated to prevent release of pollutants that may adversely affect coastal waters. Promulgation and enforcement of these rules will not violate any standards identified in the applicable CMP policies because the standards specified in the rules address MSW authorization requirements only for pet cemeteries and small animal crematories, which will not have any significant impact to coastal waters because of the nature and small size of these facilities. The specific policies that govern permit conditions for facilities handling MSW are in §501.14(d) and apply to landfills.

The commission seeks public comment on the consistency of the proposed rules with applicable CMP goals and policies.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on November 4, 2002 at 10:00 a.m., in Building F, Room 2210 at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-048-330-WS. Comments must be received by 5:00 p.m., November 18, 2002. For further information or questions concerning this proposal, please contact Joseph Thomas, Office of Environmental Policy, Analysis, and Assessment, (512) 239-4580.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §330.4

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; THSC, §361.011, which provides the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of MSW; THSC, §361.024, which provides the commission authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §361.061, which provides the commission the authority to require and issue permits authorizing and governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste under THSC, Chapter 361.

The proposed amendment implements THSC, §361.024, which provides the commission with the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §361.061, which provides the commission the authority to require and issue permits authorizing and governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste under the THSC.

§330.4. Permit Required.

(a) No person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any municipal solid waste (MSW) unless such activity is authorized by a permit or other authorization from the commission [~~Texas Water Commission~~], except as provided for in [~~subsections (c) - (h) of~~] this section. Permits issued by the Texas Department of Health prior to the effective date of this chapter satisfy the requirements of this subsection. No person may commence physical construction of a new MSW [~~municipal solid waste~~] management facility or a lateral expansion without first having submitted a permit application in accordance with §§330.50 - 330.65 of this title (relating to Permit Procedures) and received a permit from the commission, except as provided for specifically herein.

(b) (No change.)

(c) A separate permit is not required for the storage or processing of the following types of MSW [~~municipal solid waste that is~~]: grease trap wastes; [~~,~~] grit trap wastes; [~~,~~] or septage that contains free liquids if the waste is treated/processed at a permitted MSWLF. Any

person who intends to conduct such activity under this subsection shall comply with the notification requirements of §330.8 of this title (relating to Notification Requirements).

(d) A permit is not required for an MSW [~~a municipal solid waste~~] transfer station facility that is used in the transfer of MSW [~~municipal solid waste~~] to a solid waste processing or disposal facility from:

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

(3) a facility used in the transfer of MSW [~~municipal solid waste~~] that transfers or will transfer 125 tons per day or less; or

(4) a transfer station located within the permitted boundaries of an MSW [~~a municipal solid waste~~] Type I, Type II, Type III, or Type IV facility as specified in §330.41 of this title (relating to Types of Municipal Solid Waste Facilities).

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

(g) A permit amendment is not required to establish a waste-separation/recycling facility established in conjunction with a permitted MSW [~~municipal solid waste~~] site, or composting facility at an existing permitted MSW [~~municipal solid waste~~] site if owned by the permittee of the existing site. Facilities exempted from a permit amendment under this subsection shall be registered with the executive director in accordance with §330.65 of this title (relating to Registration for Solid Waste Management Facilities [~~Requirements of an Application for Registration of Solid Waste Facilities (Type V)~~]). Failure to operate such registered facilities in accordance with the requirements established in §§330.150 - 330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites) may be grounds for the revocation of the registration.

(h) (No change.)

(i) A permit or registration under this chapter is not required for the operation of an approved treatment process unit (as provided in §330.1004(c)(1) of this title (relating to Generators of Medical Waste)) used only for the treatment of on-site (as defined in §330.1004(f) of this title) generated special waste from health care-related facilities.

(j) A separate permit is not required for a facility to treat petroleum-contaminated soil if the contaminated soil is treated/processed at a permitted solid waste landfill facility. The treated soil shall be disposed of at the facility or may be used as daily cover on the facility. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §330.8 of this title [~~(relating to Notification Requirements)~~].

(k) - (l) (No change.)

(m) Any change to a condition or term of an issued permit requires a permit amendment in accordance with §305.62 of this title (relating to Amendment) or a permit modification in accordance with §305.70 of this title (relating to Municipal Solid Waste Permit Modification). The owner or operator shall submit an amendment or modification application in accordance with the requirements contained in §§330.50 - 330.65 of this title [~~(relating to Permit Procedures)~~] to address the items covered by the requested change.

(n) For energy and material recovery and gas recovery operations relating to MSW [~~municipal solid waste~~], a registration is required. A permit is not required for an MSW [~~a municipal solid waste~~] facility-Type IX that recovers gas for beneficial use. Those Type IX facilities that recover gas for beneficial use that are exempt from permitting under this subsection shall be registered with the executive director in accordance with §330.70 of this title (relating to Registration of Facilities that Recover Gas for Beneficial Use). However, exploratory and test operations for feasibility purposes may be conducted after approval of the operation by the executive director.

(o) Submission of a Soil and Liner Evaluation Report (SLER) and/or a Flexible Membrane Liner Evaluation Report (FMLER) required by §330.206 of this title (relating to Soil and Liner Evaluation Report and Flexible Membrane Liner Evaluation Report) for a liner design which meets all design and operational requirements of §§330.50 - 330.65 of this title [~~(relating to Permit Procedures)~~] and §§330.200 - 330.206 of this title (relating to Groundwater Protection Design and Operation) shall not require a permit amendment or modification.

(p) (No change.)

(q) In addition to permit exemptions established in subsection (d) of this section, a permit is not required for any new MSW [~~municipal solid waste~~] Type V transfer station that includes a material recovery operation that meets all of the requirements established by this subsection. Owners and operators of Type V transfer facilities meeting the requirements of this subsection are allowed to register their operations in lieu of permitting them. Owners and operators of transfer stations that meet the permit exemption requirements and wish to exercise the exemption option must register their operation in accordance with §330.65 of this title [~~(relating to Registration for Solid Waste Management Facilities)~~].

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

(3) Exempt facilities. Transfer facilities exempted from a permit under this subsection shall register with the executive director in accordance with §330.65 of this title and meet the additional design criteria of §330.65(f) of this title.

(4) (No change.)

(r) A permit is not required for an MSW [~~a municipal solid waste~~] transfer station that is used only in the transfer of grease trap waste, grit trap waste, septage, or other similar liquid waste if the facility used in the transfer will receive 32,000 gallons per day or less. Liquid waste transfer stations that will receive 32,000 gallons a day or less may operate if they notify the executive director [~~Executive Director~~] 30 days prior to initiating operations and if the facility is designed and operated in accordance with the requirements of §330.66 of this title (relating to Liquid Waste Transfer Facility Design and Operation). Facilities that will receive over 32,000 gallons per day must apply for a permit.

(s) A permit is not required for an MSW [~~a municipal solid waste~~] Type V processing facility that processes only grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes if:

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

(t) (No change.)

(u) A permit is not required for an MSW [~~a municipal solid waste~~] Type VI facility that demonstrates new management methods for processing or handling grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes. Those facilities meeting this exemption must obtain a registration by meeting the operational criteria and design criteria established in §330.73 of this title (relating to Registration of Demonstration Projects for Liquid Waste Processing Facilities).

(v) A permit, registration, or other authorization is not required for the disposal of litter or other solid waste, generated by an individual, on that individual's own land where:

(1) - (8) (No change.)

(9) the individual complies with the deed recordation and notification requirements in §330.7 of this title (relating to Deed Recordation) and §330.8 of this title.

(w) (No change.)

(x) A major permit amendment, as defined by §305.62 of this title (relating to Amendment), is required to reopen a Type I, Type I-AE, Type IV, or Type IV-AE MSW [~~municipal solid waste~~] facility permitted by the commission or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW [~~municipal solid waste~~] facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable current state, federal, and local requirements, including the requirements of Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (42 United States Code, §§6901 *et seq*.) and the implementing Texas state regulations. If an MSW [~~a municipal solid waste~~] facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.51(a) of this title (relating to Permit Application for Municipal Solid Waste Facilities) and §330.61 of this title (relating to Land-Use Public Hearing). This subsection does not apply to any MSW [~~municipal solid waste~~] facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(y) (No change.)

(z) A permit by rule is granted for an animal crematory that meets the requirements of §330.75 of this title (relating to Animal Crematory Facility Design and Operation for Permitting by Rule). Facilities that do not meet all the requirements of §330.75 of this title require a permit under §330.51 of this title (relating to Permit Application for Municipal Solid Waste Facilities).

(aa) A permit or registration is not required for pet cemeteries. However, a person who intends to operate a pet cemetery shall comply with the requirements of §330.7 of this title and shall ensure that the animal carcasses are covered with at least two feet of soil within a time period that will prevent the generation of nuisance odors or health risks. A pet cemetery is a facility used only for the burial of domesticated animals kept as pets and service animals such as seeing-eye dogs. Animals raised for meat production or used only for animal husbandry are not pets.

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 September 30, 2002.

TRD-200206360
Stephanie Bergeron
Director, Environmental law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: November 17, 2002
For further information, please call: (512) 239-6087

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SUBCHAPTER E. PERMIT PROCEDURES

30 TAC §330.75

STATUTORY AUTHORITY

The new section is proposed under TWC, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; THSC, §361.011, which provides the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of MSW; THSC, §361.024, which provides the commission the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §361.061, which provides the commission the authority to require and issue permits authorizing and governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste under THSC, Chapter 361.

The proposed new section implements THSC, §361.024, which provides the commission with the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §361.061, which provides the commission the authority to require and issue permits authorizing and governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste under the THSC.

§330.75. Animal Crematory Facility Design and Operational Requirements for Permitting by Rule.

(a) General prohibitions. A person may not store, process, or dispose of animal carcasses, nor operate an animal crematory facility in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of solid waste into or adjacent to waters in the state without obtaining from the commission specific authorization for such discharge;

(2) a discharge to an on-site sewage facility (a septic system);

(3) the creation of a nuisance; or

(4) endangerment of human health and welfare or the environment.

(b) Permit by rule requirements. To qualify for a permit by rule, the following requirements must be met.

(1) Facility size or capacity. Processing of carcasses shall be limited to a rate of no more than 200 pounds per hour. The facility may not accept animal carcasses that weigh more than 200 pounds each.

(2) Ash control. Ash disposal must be at an authorized facility unless the ash is returned to the animal owner or sent to a pet cemetery. Ash shall be stored in an enclosed container that will prevent release of the ash to the environment. There shall be no more than 2,000 pounds of ash stored at an animal crematory at any given time.

(3) Air pollution control. Air emissions from the facility shall not cause or contribute to a condition of air pollution as defined in Texas Clean Air Act, §382.003. All animal crematories, prior to construction or modification, must have an air permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), or qualify for a permit by rule under §106.494 of this title (relating to Pathological Waste Incinerators).

(4) Fire protection. The facility shall prepare, maintain, and follow a fire protection plan. This fire protection plan shall describe fire protection resources (a local fire department, fire hydrants,

fire extinguishers, water tanks, water well, etc.), and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(5) Storage limits. Carcasses must be incinerated within one hour of receipt, unless stored at or below a temperature of 40 degrees Fahrenheit. Storage of carcasses shall be in a manner that minimizes the release of odors. Storage of carcasses shall be limited to the amount that can be processed at the maximum loading rate for the incinerator in a two-day period. No carcass shall be stored for longer than five days unless it is frozen within 24 hours of receipt.

(6) Unauthorized waste. Only carcasses or animal parts, with any associated packaging, shall be processed. Carcasses shall not be accepted in packaging that includes any chlorinated plastics. Carcasses or animal parts that are either hazardous waste or special waste from health care-related facilities are prohibited.

(7) Cleaning. Storage and processing units must be properly cleaned on a routine basis to prevent odors and the breeding of flies.

(8) Nuisance prevention. The facility shall be designed and operated in a manner so as to prevent nuisance conditions, including, but not limited to, dust from ashes, disease vectors, excessive odors, and liquids from spills, from being released from the property boundary of the authorized facility.

(9) Diseased animals. The facility shall be equipped with appropriate protective equipment and clothing for personnel handling diseased animals which may be received at the facility. Facility owners or operators must inform customers and local veterinarians of the need to identify diseased animals for the protection of personnel handling the animals.

(10) Buffer zone. Animal crematories, including unloading and storage areas, constructed after the effective date of these rules must be at least 50 feet from the property boundary of the facility.

(11) Operating hours. Crematories shall operate within the hours specified in §330.118 of this title (relating to Hours of Operation), but shall be limited to eight hours of incineration per day.

(c) Records. Owners or operators of all facilities authorized under a permit by rule must retain records as follows:

(1) maintain a copy of all requirements of §330.4 and §330.75 of this title that apply to the facility;

(2) maintain records for the previous consecutive 12-month period containing sufficient information to demonstrate compliance with all applicable requirements of this title and all applicable permit by rule conditions;

(3) keep all required records at the facility site; and

(4) make the records available upon request to personnel from the commission.

(d) Fees. Animal crematory facilities authorized under this section are exempt from fee requirements of Subchapter P of this chapter.

(e) Other requirements. No other requirements under this chapter are applicable to a facility that meets all of the requirements of this section.

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

Filed with the Office of the Secretary of State on September 30, 2002.

TRD-200206361
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §§41.1, 41.3, 41.5, 41.7, 41.8, 41.9, 41.10, 41.14

The Teacher Retirement System of Texas (TRS) proposes amendments to the title of Chapter 41 currently designated as Insurance Programs and to the title of Subchapter A currently designated as Health Care Benefits. TRS is also proposing amendments to §41.1 concerning enrollment periods for the Texas Public School Employees Group Insurance Program; §41.3 concerning retirees advisory committee; §41.5 concerning payment of contributions; §41.7 concerning effective date of coverage; §41.8 concerning eligible bidders; §41.9 concerning bid procedure; and §41.10 concerning eligibility for coverage under Texas Public School Retired Employees Group Insurance Program. TRS also proposes new §41.14 concerning expulsion from TRS-Care for fraud.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. These sections and others have been previously reviewed in an open meeting by the TRS Policy Committee. These sections and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The proposed amendments to the names of the chapter and the subchapter reflect the need to refer to both insurance and health care programs offered by TRS and to organize sections relating to TRS-Care in one subchapter and the sections relating to TRS-ActiveCare in another subchapter. The proposed amendments to §41.1 reflect the new name of the program as of September 1, 2002, and include references to the name "TRS-Care" since the program is more commonly referred to by this name instead of the longer statutory name. The proposed amendments to §§41.3-41.9, reflect minor wording or stylistic changes or clarification of program names. The proposed amendments to §41.5 change the references to annuity "check" to annuity "payment" to

reflect that annuities made be paid by other means, such as electronic funds transfer; the amendments also make minor wording changes to clarify the effect of failure to make any required contribution for coverage. The proposed amendments to §41.7 delete references to the longer statutory name of the program and replace them with "TRS-Care," the name more familiar to participants in the program; they also address the coordination between Medicare and TRS-Care with respect to retroactive adjustments to claims payments so that the TRS-Care provisions reflect the extent of retroactive adjustments under the federal Medicare regulations. The proposed amendments to §41.8 change program name references in accordance with other sections and also modify bidder eligibility to more accurately reflect industry practices by deleting the requirement to have premiums of at least $1 billion since the requirement is not specifically applicable to contracts for administrative services only ("ASO"), which are better measured by size of population served and which compete on a "per member per month" cost basis. The proposed amendments to §41.10 make minor wording changes and also include a reference to the statutory authority of TRS to determine whether a surviving dependent child over age 25 is fully disabled for the purpose of eligibility to enroll in TRS-Care.

A new rule §41.14 is proposed because Insurance Code art. 3.50-4A, §18A provides that a proceeding to expel a participant from TRS-Care for fraud is a contested case; the new section specifies procedures applicable to such proceedings.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the new section and sections as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections.

Mr. Jung, Deputy Director, has also determined that the public benefit will be clarification of provisions relating to different aspects of the health benefits and insurance programs administered by TRS and better organization of provisions relating to the different programs. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the sections as proposed for each year of the first five years the proposals will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The new section and amendments are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the transaction of the business of the Board; Insurance Code Article 3.50-4, §5 authorizing TRS to adopt rules relating to the TRS-Care program; Acts 2001, 77th Leg. Ch. 1187, which amended several statutory provisions related to TRS-administered health care and insurance programs.

No other laws are affected by these proposed changes.

§41.1. Enrollment Periods for the Texas Public School Retired Employees Group Insurance Program (TRS-Care).

(a) The initial enrollment period in the Texas Public School Retired Employees Group Insurance Program (TRS-Care) for eligible Teacher Retirement System of Texas (TRS) retirees[~~Retirees~~], or surviving spouses of eligible retirees, will end:

(1) for eligible service retirees at the later of:

(A) 31 days after their effective retirement date; or

(B) the 31st day following the last day of the month in which their election to retire is received by TRS.

(2) for surviving spouses, 31 days after the end of the month in which the eligible retiree died or 31 days following the date of notice of eligibility sent by TRS-Care[~~the Texas Public School Employees Group Insurance Program~~] to the survivor, whichever is later.

(3) for eligible disability retirees, 31 days after the date that the disability retirement is approved by the TRS Medical Board.

(b) The enrollment period for a surviving spouse of a deceased active member, as defined by [~~the~~] Insurance Code, Article 3.50-4, §2, Subdivision 11, and for a surviving dependent child, as defined by [~~The~~] Insurance Code, Article 3.50-4, §2, Subdivision 13, will end 31 days after the end of the month in which the eligible member or retiree died or 31 days following the date of notice of eligibility sent by TRS-Care[~~the Texas Public School Employees Group Insurance Program~~] to the survivor, whichever is later.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section:

(1) a participant in TRS-Care 1 will have coverage increased to TRS-Care 2 upon becoming eligible for Medicare;

(2) A retiree may elect coverage for a spouse within 31 days of the date on which the retiree is married;

(3) A retiree or surviving spouse may add coverage for children within 31 days after the date on which the retiree or surviving spouse first acquires a child eligible for coverage under TRS-Care;

(4) a participant shall be entitled to all applicable rights under the Federal Public Health Service Act (COBRA), Title XXII.

(d) A participant's dependent coverage, if elected, will continue until the end of the month of the participant's death.

§41.3. Retirees Advisory Committee.

(a) The task and purpose of the Retirees Advisory Committee (Committee) is to:

(1) hold public hearings on group insurance benefits;

(2) recommend to the Board of Trustees of TRS (Board) [~~board~~] minimum standards and features of the plan or plans that it considers appropriate; and

(3) recommend to the Board [~~board~~] desirable changes in rules and legislation affecting the program.

(b) The Board [~~of Trustees of the Teacher Retirement System of Texas~~] will designate the chairman of the [~~Retirees Advisory~~] Committee.

(c) A majority of the Committee[~~committee~~] will constitute a quorum.

(d) The executive director of TRS [~~the retirement system~~] will provide a secretary to the Committee[~~committee~~] to prepare minutes of the Committee's[~~committee's~~] meetings. The executive director shall be custodian of the records of the Committee[~~committee~~].

(e) The executive director may designate the time, dates, and place of the meetings of the Committee[~~committee~~]. The Committee[~~committee~~] shall meet at least twice per year, and at the call of the Board[~~board~~].

(f) In the event of an emergency, a majority of the Committee's[~~committee's~~] members may call a meeting by notifying the executive director in writing at least 10 days before the meeting.

(g) The executive director shall file all meeting notices for the Committees[~~committees~~] as required by the Texas Open Meetings law.

(h) The Committee[~~committee~~] will report to the Benefits Committee of the Board or directly to the Board as appropriate.

§41.5. Payment of Contributions.

(a) Retirees shall pay monthly contributions to cover the cost of optional plans.

(b) Surviving spouses shall pay monthly contributions to cover the cost of insurance for the surviving spouse.

(c) Retirees and surviving spouses shall pay monthly contributions to cover the cost of insuring dependents.

(d) Surviving dependent children, or their representative, shall pay monthly contributions to cover the cost of insurance for the surviving dependent children.

(e) In order to be eligible for optional coverage, a retiree, surviving spouse, or surviving dependent child, or his or her representative, must authorize in writing the deduction by the trustee of the amount of the contributions from their annuity payment [~~check~~]. After such authorization, the trustee shall deduct the amount of the contribution each month from the annuity payment [~~check~~].

(f) In order to pay for dependent coverage, the retiree or surviving spouse shall authorize in writing the deduction of the contribution payment from their annuitypayment [~~check~~]. After authorization by the retiree or surviving spouse, the trustee shall deduct the amount of the contribution each month from the retiree's or surviving spouse annuitypayment [~~check~~].

(g) In the event that the amount of the contribution is more than the amount of the annuitypayment [~~check~~], the participant will be billed directly by the carrier for the entire amount.

(h) Failure to make any required contribution for coverage of a non-retiree will result in termination of coverage at the end of the month for which the last contribution was made.

(i) Failure to make any required contribution for coverage of a retiree under an optional plan will result in termination of [~~a decrease in~~] coverage from the optional plan and enrollment in [~~to~~] the basic plan, resulting in a decrease in coverage, at the end of the month for which the last contribution was made.

(j) Disability retirees shall be required to pay monthly contributions to cover the cost of coverage during periods when their annuity payments are suspended. Failure to make required [~~said~~] contributions will result in a termination of [~~decrease in~~]coverage from the optional plan and enrollment in [~~to~~] the basic plan, resulting in a decrease in coverage.

§41.7. Effective Date of Coverage.

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

(1) Noncontributory coverage--The coverage provided at no cost to eligible retirees.

(2) Contributory coverage--Coverage for which a contribution is required.

(b) The effective date of noncontributory coverage for a retiree shall be the first day of the month following the effective date of retirement unless the retiree has waived coverage in writing.

(c) The effective date of contributory coverage for the retiree shall be:

(1) the first day of the month following the effective date of retirement if the application for coverage is received by TRS-Care [~~the Texas Public School Retired Employees Group Insurance Program~~] on or before the effective retirement date; or

(2) the first day of the month following the receipt of the application by TRS-Care [~~the Texas Public School Retired Employees Group Insurance Program~~] if the application is received after the effective retirement date but within the 31-day enrollment period.

(d) Retirees who due to their effective retirement date have a choice of beginning contributory coverage in two different months may defer the effective date of coverage to the first day of the latter month if that election is made in writing and is received by TRS-Care [~~the Texas Public School Retired Employees Group Insurance Program~~] in advance of the beginning of the first month in which the effective date of coverage could have taken place.

(e) The effective date of coverage for a surviving spouse or for a surviving dependent child shall be the first day of their eligibility if TRS-Care [~~the Texas Public School Retired Employees Group Insurance Program~~] receives an application within the enrollment period and the deceased participant had the surviving spouse or the surviving dependent child covered under the program before he or she died.

(f) Where the surviving spouse or the surviving dependent child was not covered under the program immediately preceding his or her becoming eligible for coverage the effective date of coverage will be the first day of the month following receipt of an application during the enrollment period by TRS-Care [~~the Texas Public School Retired Employees Group Insurance Program~~].

(g) The effective date of coverage for dependents who are eligible to be enrolled and who are enrolled under a retiree's or surviving spouse's coverage will be:

(1) the same date as the retiree or surviving spouse if the enrollment is during the initial enrollment period;

(2) the first day of the month following receipt of the application by TRS-Care [~~the Texas Public School Retired Employees Group Insurance Program~~] if the enrollment of the dependents is after the initial enrollment period; or

(3) the day on which a child is born, if the participant has coverage for children already in effect under TRS-Care [~~the program~~].

(h) Except as provided in subsections (l), (m), and (n) of this section, the effective date of changes in coverage due to the acquisition of Medicare shall be on the first of the month following the date of receipt of a copy of the participant's or dependent's Medicare card by TRS-Care [~~the Texas Public School Retired Employees Group Insurance Program~~].

(i) Except as provided in subsections (l), (m), and (n) of this section, the effective date of reduction in coverage shall be the first day of the month following receipt of a signed request by TRS-Care [~~the Texas Public School Retired Employees Group Insurance Program~~] for reduced coverage.

(j) A retiree, surviving spouse, or surviving dependent child may cancel any coverage by submitting the appropriate cancellation notice to TRS-Care [~~the Texas Public School Retired Employees Group Insurance Program~~]. Cancellations will be effective at midnight on the last day of the month in which the signed notice is received by the program. This section shall also apply to waivers of noncontributory coverage by retirees.

(k) All participants and dependents shall be entitled to all applicable rights under the Federal Public Health Service Act (COBRA), Title XXII.

(l) Where a participant who has Medicare Part A coverage incorrectly enrolls in an insurance coverage option that provides for coverage without corresponding Medicare Part A coverage and as a result payment is made by Medicare and TRS-Care [~~the insurance program~~] in a manner that violates the provisions of [~~the~~] Insurance Code, [~~Texas Civil Statutes,~~] Article 3.50-4, which requires TRS-Care[~~the insurance program~~] to be secondary to Medicare, the Teacher Retirement System of Texas (TRS) is authorized to seek the recovery of funds paid in violation of Article 3.50-4 and to make the effective date of the correct coverage retroactive to the first day of the earliest month for which recovery of such overpaid funds is possible under Medicare rules [~~when the participant was first enrolled in both Medicare and the group insurance program~~].

(m) Where a participant who has Medicare Part A coverage incorrectly enrolls in a TRS-Care [~~an insurance~~] coverage option that provides for coverage without corresponding Medicare Part A and there is no claim made upon TRS-Care [~~the insurance program~~] or the legitimate claim is less than the amount of overpaid contributions [~~or premiums~~], TRS-Care is authorized to refund or credit the amount due to the participant and to make the effective date of the correct coverage retroactive to when the participant was first enrolled in both Medicare and TRS-Care to a maximum retroactive period of twelve months, including the month in which proof of Medicare Part A is received by TRS-Care [~~the group insurance program~~].

(n) Upon discovery by TRS-Care of a participant who does not have Medicare Part A coverage and who is incorrectly enrolled in a TRS-Care [~~an insurance~~] coverage option that provides for corresponding Medicare Part A, TRS-Care will contact the participant and advise them that the cost of coverage and the coverage will be adjusted prospectively effective the first day of the next month unless a copy of a Medicare card showing Part A coverage is received prior to that date. Claims shall be paid based upon the coverage in effect at the time the services were provided. Any claims already paid as if Part A was in effect shall not be adjusted.

§41.8. Eligible Bidders.

(a) TRS-Care [~~The Texas Public School Retirees Group Insurance Program~~]may include separate contracts for:

(1) a health benefit plan;

(2) a utilization review service; and

(3) services to provide other ancillary benefits.

(b) To be eligible to bid on any of the contracts in subsection (a) of this section, a bidder must currently be servicing at least twice as many persons as will be covered under TRS-Care [~~the health benefit services or products a bidder must have annual health benefit premiums and premium equivalents of at least $1 billion.~~]

[~~(c) To be eligible to bid on utilization review a bidder must:~~]

[~~(1) satisfy the eligibility requirement set forth in subsection (b) of this section; and~~]

[~~(2) currently be servicing at least twice as many persons as will be covered under this program.~~]

[~~(d) To be eligible to bid on services to provide other ancillary benefits a bidder must currently be servicing at least twice as many persons as will be covered under this program.~~]

(c) [~~(e)~~] Bidders who desire to bid on the administrative services only of a TRS benefits program that [~~which~~] includes group health benefits are not covered by subsection (d)[~~(f)~~] of this section.

(d) [~~(f)~~] Bidders who wish to bid on services or products available to the entire state or to a region of the state shall provide information for each area, consisting of a county and all adjacent counties, on the number and types of qualified providers willing to participate in coverage or plan[~~,~~] for which the bid is made.

(e) [~~(g)~~] In determining the quality of the bids, the Board of Trustees of the Teacher Retirement System of Texas or its designee may consider such factors and criteria as they deem relevant and appropriate under the circumstances.

§41.9. Bid Procedure.

(a) All bids for contracts under TRS-Care [~~the group insurance program~~] must be submitted and all applicable questions answered on the bid specification forms adopted and provided by the Teacher Retirement System of Texas (TRS).

(b) All bids must be submitted in duplicate in separate sealed envelopes to the Director of TRS-Care [~~Group Insurance Program~~], Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698.

(c) All bids must be received no later than the date and time set by TRS [~~the Teacher Retirement System~~] on the bid specification forms.

(d) The bid opening will take place at a date and time set by TRS [~~the Teacher Retirement System~~] in the TRS [~~Teacher Retirement System of Texas~~] building at 1000 Red River Street, Austin, Texas.

§41.10. Eligibility for Coverage under the Texas Public School Retired Employees Group Insurance Program.

(a) The following persons are eligible to be enrolled in the Texas Public School Retired Employees Group Insurance Program (TRS-Care):

(1) service retirees of the Teacher Retirement System of Texas (TRS) who are not eligible to be enrolled as an employee or retiree by a plan provided under the Texas Employees Uniform Group Insurance Benefits Act ([~~Texas~~] Insurance Code, Article 3.50-2), or under the Texas State College and University Uniform Insurance Benefits Act ([~~Texas~~] Insurance Code, Article 3.50-3);

(2) disability retirees of TRS [~~the Teacher Retirement System~~] who are not eligible to be enrolled as an employee or retiree by a plan provided under the Texas Employees Uniform Group Insurance Benefits Act ([~~Texas~~] Insurance Code, Article 3.50-2)[~~,~~] or under the Texas State College and University Uniform Insurance Benefits Act ([~~Texas~~] Insurance Code, Article 3.50-3);

(3) surviving spouses of deceased service or disability retirees of TRS [~~the Teacher Retirement System~~]; and

(4) surviving dependent children of a deceased service or disability retiree or of a deceased active TRS member.

(b) To be eligible for coverage under TRS-Care under this section, a service retiree of TRS [~~the Teacher Retirement System~~] must have 10 years of service credit for actual service in the public schools of Texas.

(c) A disability retiree with less than 10 years of service credit will not be eligible for coverage under TRS-Care when disability retirement benefits terminate.

(d) A surviving spouse of a deceased TRS service or disability retiree is eligible to enroll in TRS-Care if the deceased TRS service or

disability retiree was eligible to enroll or would have been eligible to enroll in TRS-Care at the time of the retiree's death.

(e) A surviving spouse of a deceased active TRS member is eligible to enroll in TRS-Care if the deceased active member:

(1) died on or after September 1, 1986;

(2) had 10 or more years of actual service credit in TRS; and

(3) made contributions to TRS-Care at the member's last place of employment in public education in Texas.

(f) A surviving [~~Surviving~~] dependent child [~~children~~] of a deceased TRS retiree [~~retirees~~] or deceased active TRS member is [~~members are~~] eligible to enroll in TRS-Care if the deceased retiree met the conditions of subsection (d) of this section or the deceased active member met the conditions of subsection (e) of this section. A surviving [~~Surviving~~] dependent child [~~children~~] must also meet the following conditions:

(1) the child [~~child(ren)~~] must be a natural or adopted child [~~child(ren)~~] of the deceased retiree or member or must be a foster child, stepchild, or other child [~~stepchild(ren), or other child(ren)~~] who lived in a parent-child relationship with the retiree or member; and

(2) the child [~~child(ren)~~] must be unmarried and under age 25 or must be age 25 or older but still unmarried and fully [~~mentally retarded or physically~~] disabled to such an extent as to have been dependent upon the deceased retiree or member for support at the time of the retiree's or member's death, as determined by TRS as trustee and as described by Insurance Code, Article 3.50-4, §3, subdivision (3).

(g) If a service or disability retiree has a legal spouse or if a retiree or surviving spouse has an eligible child or children when the retiree or surviving spouse becomes eligible but does not elect to cover that spouse or that child or children within 31 days, TRS-Care coverage may not be obtained for the spouse or the child [~~child(ren)~~] until a subsequent enrollment period.

(h) If a service or disability retiree has no spouse or if a retiree or surviving spouse has no eligible child or children when he or she first becomes eligible, but acquires a spouse or child or children at a later date, the retiree can obtain spouse or child or children coverage if he or she makes application within 31 days of the date the spouse or first eligible child is acquired.

§41.14. Expulsion from TRS-Care for Fraud.

(a) The trustee, acting through the TRS Executive Director, may expel from participation in TRS-Care a person who has engaged in, caused, or attempted to engage in fraudulent activity relating to the program or any benefits offered under the program.

(b) Upon receipt of a complaint or upon its own motion, the TRS staff may file a petition for expulsion with the Executive Director. The Executive Director may docket the petition and refer the matter for a hearing by the State Office of Administrative Hearings. If a petition is docketed, the provisions of Chapter 43 of this title (relating to Contested Cases) shall apply to the proceeding.

(c) Following a hearing, the Executive Director may expel a person from participation in TRS-Care for a period of time not to exceed five years. Pursuant to the delegation of authority through this section, the order of the Executive Director is the final decision of TRS.

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 September 30, 2002.

TRD-200206352
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: December 19, 2002
For further information, please call: (512) 542-6115

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CHAPTER 41. INSURANCE PROGRAMS
SUBCHAPTER A. HEALTH CARE BENEFITS

34 TAC §41.12, §41.13

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

The Teacher Retirement System of Texas (TRS) proposes the repeal of §41.12 concerning certification of insurance coverage and §41.13 concerning participation in the Texas Public School Employees Group Insurance Program by Public School Districts.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. These sections and others have been previously reviewed in an open meeting by the TRS Policy Committee. These sections and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The repeal of §41.12 is proposed because the certification of comparability of a school district's insurance coverage does not relate to the TRS-Care program and thus this section should be removed from Subchapter A. A similar provision is simultaneously being proposed as new §41.91 in new Subchapter D. The repeal of §41.13 is proposed because the reasons for originally the rule no longer exist because Acts 2001, 77th Leg., ch. 1187, §3.20 repealed the limited health benefits program for school district employees and replaced it with TRS-ActiveCare effective September 1, 2002.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the repeals will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section.

Mr. Jung, Deputy Director, has also determined that the public benefit will be the reorganization of certain sections within the chapter and the deletion of obsolete provisions resulting in simplification and clarification of provisions relating to different aspects of the health benefits and insurance programs administered by TRS. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the sections as proposed for each year of the first five years the proposals will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The repeals are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the transaction of the business of the Board; Insurance Code Article 3.50-4, §5 authorizing TRS to adopt rules relating to the TRS-Care program; Acts 2001, 77th Leg. Ch. 1187, which amended several statutory provisions related to TRS-administered health care and insurance programs.

No other laws are affected by these proposed changes.

§41.12. Certification of Insurance Coverage.
§41.13. Participation in the Texas Public School Employees Group Insurance Program by Public School Districts.

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 September 30, 2002.

TRD-200206351
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: December 19, 2002
For further information, please call: (512) 542-6115

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CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
SUBCHAPTER B. LONG-TERM CARE, DISABILITY AND LIFE INSURANCE

34 TAC §§41.15 - 41.20

The Teacher Retirement System of Texas (TRS) proposes amendments to §41.15 concerning requirements to bid on insurance for school district employees and retirees under article 3.50-4A of the Insurance Code; §41.16 concerning coverage offered under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program; §41.17 concerning definitions; §41.18 concerning eligibility for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program; §41.19 concerning enrollment periods for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program; and §41.20 concerning effective date of coverage under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. These sections and others have been previously reviewed in an open meeting by the TRS Policy Committee. These sections and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The proposed amendments to §§41.16-41.18 reflect minor wording or stylistic changes or clarification of program names. The proposed amendments to §41.15 make minor wording changes and also clarify that the specified capital and surplus requirements are for a bidder's current financial condition. The proposed amendments to §§41.19 and 41.20 eliminate references to past enrollment periods that have expired and coverage effective dates that have passed.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the sections as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections.

Mr. Jung, Deputy Director, has also determined that the public benefit will be clarification of provisions relating to different aspects of the health benefits and insurance programs administered by TRS. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the sections as proposed for each year of the first five years the proposals will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The amendments are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the transaction of the business of the Board and under the Insurance Code Article 3.50-4A, which gives TRS authority to adopt rules as necessary to implement and administer the Texas Public School Employees Group Long-Term Care Insurance Program.

No other laws are affected by these proposed changes.

§41.15. Requirements to Bid on Insurance For School District Employees and Retirees Under Article 3.50-4A of the Insurance Code.

(a) All contractors contracting and providing coverage under Article 3.50-4A, [~~of the~~] Insurance Code, shall:

(1) administer enrollment;

(2) adjudicate all claims related to the coverage, except for eligibility of participant under the statute, which shall remain the responsibility of the Teacher Retirement System as trustee [~~Trustee~~];

(3) coordinate services under the insurance coverages provided under Insurance Code Article [~~article~~] 3.50-4A; and

(4) account for any premiums collected and disbursed under the coverages.

(b) To be eligible to bid on providing long-term care insurance, a carrier must:

(1) have had during the preceding calendar year at least $10 million of long-term care premium income;

(2) currently have capital and surplus of at least $500 million; and

(3) currently have at least three ratings within the top four rating categories as defined by the major insurance industry rating agencies. If a carrier is not rated, it may satisfy this requirement by showing that the carrier has twice the minimum financial requirements as stated in paragraphs (1) and (2) of this subsection.

(c) To be eligible to bid on providing optional permanent life insurance a carrier must:

(1) have had at least $200 million of individual life premium income during the last calendar year;

(2) currently have capital and surplus of at least $500 million; and

(3) currently have at least three ratings within the top four rating categories as defined by the major insurance industry rating agencies. If a carrier is not rated, it may satisfy this requirement by showing that the carrier has twice the minimum financial requirements as stated in paragraphs (1) and (2) of this subsection.

(d) To be eligible to bid on providing disability insurance a carrier must:

(1) have had during the preceding calendar year at least $50 million of short-term and long-term disability combined premium income;

(2) currently have capital and surplus of at least $500 million; and

(3) currently have at least three ratings within the top four rating categories as defined by the major insurance industry rating agencies. If not rated, a carrier may satisfy this requirement by showing that the carrier has twice the minimum financial requirements as stated in paragraphs (1) and (2) of this subsection.

§41.16. Coverage Offered Under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

Under the authority granted by Article 3.50-4A, [~~of the Texas~~] Insurance Code, the Board of Trustees of the Teacher Retirement System of Texas (TRS) may select or reject any and all coverage options relating to the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program, including but not limited to:

(1) Inflation protection options, including without limitation inflation protection options based on compound or simple interest assumptions; and

(2) Nonforfeiture benefit options, including without limitation reduced paid-up, extended term, shortened benefit period, and return-of-premium at death.

§41.17. Definitions.

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

(1) Carrier or Insurer--Any entity authorized by the Texas Department of Insurance to provide any of the insurance coverage, benefits, or services described by Insurance Code Article [~~art.~~] 3.50-4A under the insurance laws of this state.

(2) Effective date of employment--The first day of active duty in an eligible employee's first TRS-covered position in a Texas public school.

(3) Eligible family members--Family members described in §41.18(a) and (b) of this title (relating to Eligibility for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program).

(4) Newly hired--Eligible employees who begin employment in their first TRS-covered position in a Texas public school during or after the initial enrollment period.

(5) Participating member--A person defined by Government Code §§822.001 and 822.002 whose membership has not terminated as described by Government Code §§822.003 - 822.006.

(6) Trustee or TRS--The Teacher Retirement System of Texas.

§41.18. Eligibility for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

(a) Participating members of the Teacher Retirement System of Texas (TRS) who are not participating in a group insurance program under the Texas Employees Uniform Group Insurance Benefits Act or the Texas State College and University Employees Uniform Insurance Benefits Act, their spouses, surviving spouses, parents, grandparents, parents of their spouses and parents of their surviving spouses shall be eligible under the Insurance Code, Article 3.50-4A.

(b) Texas public school retirees, as defined by Insurance Code, Article 3.50-4A, §2, who are not participating in a group insurance program under the Texas Employees Uniform Group Insurance Benefits Act or the Texas State College and University Employees Uniform Insurance Benefits Act, their spouses, surviving spouses, parents, grandparents, parents of their spouses and parents of their surviving spouses shall be eligible under the Insurance Code, Article 3.50-4A.

§41.19. Enrollment Periods for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

[~~(a) The initial enrollment period for eligible participating members and their eligible family members to participate in the long-term care insurance program shall begin on August 1, 2000 and end at 11:59 p.m. Central Time November 30, 2000.~~]

[~~(b) The initial enrollment period for eligible Texas public school retirees and their eligible family members to participate in the long-term care insurance program shall begin on July 3, 2000 and end at 11:59 p.m. Central Time September 30, 2000.~~]

(a) [~~(c)~~] In accordance with Insurance Code, Article 3.50-4A, the Teacher Retirement System of Texas as trustee has authority to declare periodic open enrollment and the rules and conditions for such open enrollment periods.

(b) [~~(d)~~] The standard enrollment period for newly hired eligible participating members and their eligible family members to participate in the Long-term Care Insurance Program [~~long-term care insurance program~~] shall begin on the effective date of employment and end at 11:59 p.m. Central Time on the 90th day after the effective date of employment.

(c) [~~(e)~~] The standard enrollment period for eligible current Texas public school employees who are covered under their employer-sponsored group long-term care plan will begin on the date such plan is terminated by their employer and end at 11:59 p.m. Central Time on the 30th day after the termination date of such plan.

(d) [~~(f)~~] The standard enrollment period for surviving spouses of eligible participating members and surviving spouses of eligible retirees to participate in the Long-term Care Insurance Program [~~long-term care insurance program~~] shall begin on the first day after the eligible employee or retiree dies and end at 11:59 p.m. Central Time [~~central time~~] on the 30th day after the end of the month in which the eligible participating member or retiree dies.

(e) [~~(g)~~] The standard enrollment period for new spouses and parents of new spouses shall begin on the date of the eligible participating member's or retiree's marriage and end at 11:59 p.m. Central Time on the 30th day after marriage.

(f)[~~(h)~~] If an eligible individual described in subsection (b), (c), (d), or (e) [~~(d), (e), (f) or (g)~~] of this section is permitted to enroll under two or more of the provisions of this section, the individual may enroll during the timeframe of either enrollment period.

(g) [~~(i)~~] An individual's status as an eligible retiree, eligible participating member or eligible family member shall be determined as of the date a complete enrollment application is received by the carrier.

§41.20. Effective Date of Coverage Under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

~~[(a) Coverage for eligible retirees and eligible family members of eligible retirees of the Teacher Retirement System of Texas who enroll during the initial enrollment period and who satisfy underwriting guidelines shall be effective the later of:]~~

~~[(1) October 1, 2000; or]~~

~~[(2) The first day of the month after the date the carrier grants underwriting approval.]~~

~~[(b) Coverage for eligible participating members of the Teacher Retirement System of Texas who enroll during the initial enrollment period and who satisfy underwriting guidelines shall be effective on the later of:]~~

~~[(1) December 1, 2000; or]~~

~~[(2) The first day of the month after the date the carrier grants underwriting approval.]~~

~~[(c) Coverage for eligible family members of eligible participating members of the Teacher Retirement System of Texas who enroll during the initial enrollment period and who satisfy underwriting guidelines shall be effective on the later of:]~~

~~[(1) December 1, 2000; or]~~

~~[(2) The first day of the month after the date the carrier grants underwriting approval.]~~

(a) [~~(d)~~] Coverage for newly hired eligible participating members of the Teacher Retirement System of Texas (TRS) who enroll during their first 90 days of eligibility shall be effective on the first day of the month following the carrier's receipt of complete enrollment materials.

(b) [~~(e)~~] Coverage for eligible family members of newly hired eligible participating members of TRS [~~the Teacher Retirement System of Texas~~] who enroll during their first 90 days of eligibility and who satisfy underwriting guidelines shall be effective on the first day of the month after the date the carrier [~~Carrier~~] grants underwriting approval.

(c) [~~(f)~~] Coverage for eligible participating members and retirees of TRS [~~the Teacher Retirement System of Texas~~] who enroll during open enrollment periods established [~~which may be determined~~] by TRS as [~~the~~] trustee and who satisfy underwriting guidelines shall be effective on the date established by the trustee.

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 September 30, 2002.

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Charles Dunlap
Executive Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6115

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SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §41.30, §41.32

The Teacher Retirement System of Texas (TRS) proposes amendments to the title of Subchapter C currently designated as Texas School Employees Group Health; and to §41.30 concerning participation in the Texas School Employees Uniform Group Health Coverage Act by school districts, other educational districts, charter schools, and regional education service centers and §41.32 concerning bid procedures.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. These sections and others have been previously reviewed in an open meeting by the TRS Policy Committee. These sections and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The proposed amendment to the name of the subchapter reflects the addition of the name by which the group health program is commonly known. The proposed amendments to §41.30 and §41.32 reflect minor wording or stylistic changes or clarification of program names.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the sections as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections.

Mr. Jung, Deputy Director, has also determined that the public benefit will be clarification of provisions relating to different aspects of the health benefits and insurance programs administered by TRS. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the sections as proposed for each year of the first five years the proposals will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The amendments are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the transaction of the business of the Board and Insurance Code Article 3.50-7 establishing the TRS-ActiveCare program and authorizing, in §3, the adoption of rules relating to the program.

No other laws are affected by these proposed changes.

§41.30. Participation in the Texas School Employees Uniform Group Health Coverage Act (TRS-ActiveCare) by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers.

(a) Manner, form and effect of election. All elections to opt in or opt out of participation in the uniform group coverage under the Texas School Employees Uniform Group Health Coverage Act (the "Act") (TRS-ActiveCare) pursuant to the provisions of Insurance Code, Article 3.50-7, §§5 or 6, as added by the 77th Legislature, 2001 in House Bill 3343 shall be in writing, on an election form prescribed by the Teacher Retirement System of Texas (TRS) [~~"TRS"~~)], and received by TRS no later than 5:00 p.m. on or before the applicable election deadline date specified in this section. An election form otherwise valid received by facsimile before the applicable deadline is acceptable

if TRS receives the original, signed election form within seven calendar days after the applicable deadline. An incomplete or unsigned form will not be deemed received by TRS for purposes of determining whether a valid election has been exercised. A valid election filed with TRS is irrevocable once the election deadline passes, unless TRS is authorized to extend a deadline and does so by resolution of the TRS Board of Trustees. Entities electing to participate in the uniform group coverage under the Act may not discontinue participation unless authorized by Insurance Code, Article 3.50-7, and by appropriate rule or resolution adopted by the TRS Board of Trustees. Entities opting out of participation in the uniform group coverage under the Act have no further opportunity to elect to participate except as authorized by Insurance Code, Article 3.50-7, and by appropriate rule or resolution adopted by the TRS Board of Trustees. If an entity has an option to opt in and thereby participate in the coverage under the Act, a failure to properly or timely file the election form shall have the effect of the entity electing not to participate. Likewise, if an entity has an option to opt out and thereby not participate in the coverage under the Act, a failure to properly or timely file the election form shall have the effect of the entity electing to participate.

(b) School districts with 500 or fewer employees. Pursuant to Insurance Code, Article 3.50-7 §5(a), school districts with 500 or fewer employees as of January 1, 2001 are required to participate effective September 1, 2002 in the uniform group coverage under the Act, except that certain of these school districts may delay or opt out of participation by specified election deadlines as provided in paragraphs (1) through (3) of this subsection. On or before September 1, 2001, all school districts must furnish information and verifications requested by TRS on the form prescribed by TRS, regardless of whether an election to delay or opt out of participation applies to such district or is being exercised by such school district.

(1) Pursuant to Insurance Code, Article 3.50-7 §5(g), a school district with 500 or fewer employees as of January 1, 2001 that, on January 1, 2001, was individually self-funded for the provision of health care coverage to its employees may elect to opt out of the mandatory participation in coverage effective September 1, 2002, by filing its election form with TRS on or before September 1, 2001.

(2) Pursuant to Insurance Code, Article 3.50-7 §5(e), a school district with 500 or fewer employees as of January 1, 2001 that was a member on January 1, 2001 of a risk pool established under the authority of Local Government Code, Chapter 172, may opt out of the mandatory participation in coverage effective September 1, 2002 by filing its election form with TRS on or before September 1, 2001 and electing thereby to continue in the risk pool that the district participated in on January 1, 2001.

(3) Pursuant to Insurance Code, Article 3.50-7 §5(h), a school district with 500 or fewer employees as of January 1, 2001 that is a party to a contract for the provision of health insurance coverage to the employees of the district that is in effect on September 1, 2002 may delay mandatory participation in coverage effective September 1, 2002, by filing its election with TRS on or before September 1, 2001. At the time of such election, such a school district must provide the expiration date of the contract to TRS and shall begin mandatory participation in the uniform group coverage under the Act on the first day of the month immediately following the month in which termination or expiration of the contract occurs.

(c) School districts with 501 or more employees. Pursuant to Insurance Code, Article 3.50-7 §5(b), school districts with 501 or more employees on January 1, 2001 may elect to participate in the uniform group coverage under the Act, with coverage effective September 1, 2005. January 1, 2005 is the deadline for such a school district to file its election with TRS to participate in the uniform group coverage under the Act. Notwithstanding the preceding two sentences, school districts with 501 or more employees may elect to participate prior to September 1, 2005 as set forth in paragraphs (1) and (2) of this subsection. All school districts must furnish information and verifications to TRS on or before September 30, 2001 on a form prescribed by TRS, regardless of whether an election to participate prior to September 1, 2005 applies to such district or is being exercised by such district.

(1) Pursuant to Insurance Code, Article 3.50-7 §5(b-1), school districts may elect to participate prior to September 1, 2005 if TRS determines that participation prior to September 1, 2005 by school districts with more than 500 employees on January 1, 2001 would be administratively feasible and cost-effective. TRS will set the election deadline from time to time by rule or resolution of the TRS Board of Trustees, as applicable.

(2) Pursuant to Insurance Code, Article 3.50-7 §5(a-1), September 30, 2001 is the deadline for a school district with at least 501 but not more than 1,000 employees on January 1, 2001 to file its election to commence participation effective September 1, 2002. A school district that does not elect to opt in early and participate effective September 1, 2002, may elect in the future to opt in if otherwise permitted under this subsection.

(d) Educational districts. Pursuant to Insurance Code, Article 3.50-7 §5(i), educational districts whose employees are members of TRS are required to participate effective September 1, 2002 in the uniform group coverage under the Act, except that educational districts with 500 or fewer employees on January 1, 2001 may opt out of participation. September 1, 2001 is the deadline for such an educational district to file its election with TRS to opt out of participation in the uniform group coverage under the Act. Regardless of whether an educational district elects to opt out of participation and file an election form, information and verifications requested by TRS must be furnished by all educational districts on the form prescribed by TRS and returned to TRS on or before September 1, 2001.

(e) Charter schools. Pursuant to Insurance Code, Article 3.50-7 §6, an open-enrollment charter school established under Education Code, Chapter 12, Subchapter D, ("charter school") may elect to participate in the uniform group coverage under the Act. Only an eligible charter school may elect to participate. A charter school that received funding in accordance with Education Code, Chapter 12, prior to June 1, 2001, must furnish information and verifications requested by TRS, on the form prescribed by TRS, on or before September 1, 2001, whether or not the charter school elects to participate in the uniform group coverage.

(1) Pursuant to Insurance Code, Article 3.50-7 §6(a), to be eligible, a charter school must agree to inspection of all records of the school relating to its participation in the uniform group coverage under the Act by TRS, by the administering firm as defined in Insurance Code, Article 3.50-7 §2(1), by the commissioner of education, or by a designee of any of those entities, and further must agree to have its accounts relating to participation in the uniform group coverage under the Act annually audited by a certified public accountant at the school's expense. The agreement of the charter school shall be evidenced in writing and shall constitute a part of the election form prescribed by TRS pursuant to subsection (a) of this section.

(2) Pursuant to Insurance Code, Article 3.50-7 §6(b), an eligible charter school shall elect to participate in the uniform group coverage under the Act effective September 1, 2002, by filing its election form with TRS on or before September 1, 2001 if the charter school received any state funding in accordance with Education Code, Chapter 12, prior to June 1, 2001.

(3) Pursuant to Insurance Code, Article 3.50-7 §6(b), an eligible charter school that did not receive any state funding in accordance with Education Code, Chapter 12, prior to June 1, 2001, shall elect, if at all, to participate in the uniform group coverage under the Act by filing its election form with TRS on or before the later of September 1, 2001 or the ninetieth calendar day following the date the Texas Education Agency authorized the Comptroller to issue the first payment of state funds to such charter school. Participation in coverage for such eligible charter school shall be effective on the later of September 1, 2002 or the first day of the month following the month in which a valid election to participate is filed with TRS.

(f) Regional education service centers. Pursuant to Insurance Code, Article 3.50-7 §5(a), each regional education service center established under Education Code, Chapter 8, is required to participate effective September 1, 2002 in the uniform group coverage under the Act. Information and verifications requested by TRS must be furnished by each regional education service center on the form prescribed by TRS and returned to TRS on or before September 1, 2001.

(g) This section becomes effective at the earliest date permitted by law, but not later than September 1, 2001.

§41.32. Bid Procedure.

(a) All bids must be received no later than the date and time set by the Teacher Retirement System of Texas (TRS). Late bids will be returned to the bidder unopened. Late bids will not be considered under any circumstances.

(b) The bid opening shall take place at a date and time set by (TRS) [~~the Teacher Retirement System~~].

(c) In determining the quality of the bids, the Board of Trustees or its designee may consider such factors and criteria as they deem relevant.

(d) Bids must be valid for at least 120 days following the proposal receipt date.

(e) TRS shall not provide compensation to bidders for any expenses incurred by the bidder for bids preparation or for any demonstrations that may be made. Bidders submit bids at their own risk and expense.

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

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SUBCHAPTER D. COMPARABILITY OF GROUP HEALTH COVERAGES

34 TAC §41.91

The Teacher Retirement System of Texas (TRS) proposes a new Subchapter D entitled Comparability of Group Health Coverages and a new §41.91 concerning certification of insurance coverage.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. This section and others have been previously reviewed in an open meeting by the TRS Policy Committee. This section and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The proposed new subchapter reflects the reorganization of Chapter 41 to refer to both insurance and health care programs offered by TRS and to organize sections relating to TRS-Care in one subchapter, the sections relating to TRS-ActiveCare in another subchapter, and the comparability of group health coverages in another. The proposed new §41.91 concerning the certification of comparability of a school district's insurance coverage replaces a similar provision contained in Subchapter A, §41.12 and simultaneously being proposed for repeal in this issue of the *Texas Register*.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the new section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section.

Mr. Jung, Deputy Director, has also determined that the public benefit will be clarification of provisions relating to different aspects of the health benefits and insurance programs administered by TRS and better organization of provisions relating to the different programs. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the section as proposed for each year of the first five years the proposals will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The new subchapter and section are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the transaction of the business of the Board and under the Education Code, §22.004 which requires the Board of Trustees of TRS to adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage specified by that statute.

No other laws are affected by these proposed changes.

§41.91. Certification of Insurance Coverage.

(a) This section applies only to school districts that do not participate in the program offered under Insurance Code, Article 3.50-7.

(b) The executive director of the Teacher Retirement System of Texas (TRS) shall determine the comparability of a school district's group health coverage to the coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Insurance Code, Article 3.50-2). As required by the Education Code, §22.004 each district shall make available to its employees group health coverage provided by a risk pool established by one or more school districts under the Local Government Code, Chapter 172 or under a policy of insurance or group contract issued by an insurer, a company subject to the Insurance Code, Chapter 20, or a health maintenance organization under the

Texas Health Maintenance Organization Act (Insurance Code, Chapter 20A). The coverage must meet the substantive coverage requirements of Insurance Code, Article 3.51-6 and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental diagnostic procedures. In this subsection, "major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Insurance Code, Article 3.50-2). In addition to these requirements, the following factors shall be considered in determining comparability:

(1) the deductible amount for service provided inside and outside of the network;

(2) the coinsurance percentages for service provided inside and outside of the network;

(3) the maximum amount of coinsurance payments a covered person is required to pay;

(4) the amount of the co-payment for an office visit;

(5) the schedule of benefits and the scope of coverage;

(6) the lifetime maximum benefit amount; and

(7) verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance or is provided by a risk pool authorized under Chapter 172, Local Government Code, or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

(c) For the purposes of this decision, comparable means similar, but not identical.

(d) TRS staff, under the direction of the executive director, will develop a methodology and criteria for comparison determination. This methodology will include an evaluation of relevant variables with respect to applicable factors stated in subsection (b) of this section, including the following related to the scope of coverage:

(1) types of plans available in each area;

(2) access to providers, including specialists; and

(3) provider network availability and utilization.

(A) To provide for the reasonable and accurate consideration of these variables, a determination of each plan's benefit replacement ratio to the basic Texas Employees Uniform coverage will be used. Benefit replacement ratio means the ratio of benefits projected to be paid by the plan to the projected incurred cost of the services provided. Benefit replacement ratio determinations will involve review of applicable factors set forth in the Education Code, §22.004(a) in connection with plan information provided by the district. A plan will be certified as comparable if it has a benefit replacement ratio not more than five percentage points below the ratio of the applicable benchmark plan under the Insurance Code, Article 3.50-2.

(B) The benchmark plan will reflect the basic health coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Insurance Code, Article 3.50-2) ("Act"). Specifically the benchmark plan is the plan under the Act (or two plans if, in accordance with the Act, there is a distinction between point of service and out-of-network indemnity plans) most prevalent by number of employees participating. If the most prevalent plan(s) under the Act are amended, the benchmark plan(s) will be amended accordingly.

(C) Where a district offers multiple plans, some of which are determined by this methodology to be comparable, while others are not, the plans will be frequency weighted by the number of members therein, such that a weighted average will be determined. Accordingly, the school district composite comparability will be reported, as described by subsection (f) of this section, in addition to the comparability of each individual plan.

(D) TRS staff and the executive director may consult with qualified experts (including a group insurance consultant or actuary as described in Insurance Code, Article 3.50-4, §5(a)(9)) to evaluate comparability, develop and use methodology, and determine benefit replacement ratios.

(E) For reference purposes, the employee cost for each plan will also be reported, as described by subsection (f) of this section. However, employee cost will not be a factor in determining comparability.

(e) Each public school district shall report, using a uniform reporting form or method of reporting prescribed by the Teacher Retirement System (TRS), the district's compliance with the Education Code, §22.004(c), to the executive director of TRS by March 1 of each even-numbered school year. The report must reflect the district group health coverage plan in effect during the current plan year and must include all information required by statute and any additional information requested by TRS staff to complete the certification. A district's failure to submit required information to TRS on or before March 1 of each even-numbered year may result in a TRS report to the Legislative Budget Board and the legislature reflecting the district's non-compliance, as described in subsection (f) of this section.

(f) The executive director of TRS shall certify whether a district's coverage is comparable to the basic health coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Insurance Code, Article 3.50-2). If the executive director determines that the group health coverage offered by a district is not comparable, the executive director shall report that information to the district and to the Legislative Budget Board. The executive director shall submit a report to the legislature not later than September 1 of each even-numbered year describing the status of each district's group health coverage program based on the information provided by the district and the certification described herein.

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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Charles Dunlap
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CHAPTER 43. CONTESTED CASES

34 TAC §§43.1 - 43.21, 43.23 - 43.29, 43.33 - 43.47

The Teacher Retirement System of Texas (TRS) proposes amendments to the title of Chapter 43 currently designated as "Adjudicative Hearings" and to §43.1 concerning administrative review of individual complains; §43.2 concerning effect of

invalidity of rules; §43.3 concerning definitions; §43.4 concerning decisions subject to review by an adjudicative hearing; §43.5 concerning request for an adjudicative hearing; §43.6 concerning filing of documents; § 43.7 concerning computation of time; §43.8 concerning extensions; §43.9 concerning docketing of adjudicative hearing, dismissal, and SOAH authority; §43.10 concerning authority to grant relief; §43.11 concerning classification of pleadings; §43.12 concerning form of petitions and other pleadings; §43.13 concerning fling of pleadings and amendments; §43.14 concerning briefs; §43.15 concerning motions; §43.16 concerning notice of hearing and other action; §43.17 concerning agreements to be in writing; §43.18 concerning motion for consolidation; §43.19 concerning intervention; §43.20 concerning representation by attorney; §43.21 concerning lead counsel; §43.23 concerning powers of the hearing officer; §43.24 concerning prehearing conference; §43.25 concerning conduct of hearing; §43.26 concerning general admissibility; §43.27 concerning exhibits; §43.28 concerning admissibility of prepared testimony; §43.29 concerning limit on number of witnesses; §43.33 concerning failure to appear; §43.34 concerning conduct and decorum at hearing; §43.35 concerning official notice; §43.36 concerning ex parte communications; §43.38 concerning dismissal without hearing; §43.39 concerning summary judgment; §43.40 concerning the record; §43.41 concerning findings of fact; §43.42 concerning reopening of hearing; §43.43 concerning subpoenas; §43.44 concerning discovery, entry on property, and use of reports and statements; §43.45 concerning final decisions and appeals to the board of trustees; §43.46 concerning rehearing; and §43.47 concerning procedures not otherwise provided. TRS also proposes a new §43.37 concerning recording of the hearing and the use of a certified language interpreter. The existing §43.37 concerning reporters and transcripts is simultaneously being proposed for repeal in this issue of the *Texas Register*.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. These sections and others have been previously reviewed in an open meeting by the TRS Policy Committee. These sections and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The proposed amendments generally reflect changes needed to better integrate TRS's contested case procedures with those of the State Office of Administrative Hearings (SOAH), 1 TAC Ch. 155, as recently amended and to clarify procedures applicable to contested cases. They also clarify authority of the executive director to act with respect to certain aspects of contested case proceedings. The proposed amendments to §§43.1 and 43.4 clarify the applicability of the chapter to matters relating to the TRS pension plan, the procedures for appealing a final administrative decision of a TRS chief officer or the TRS Medical Board, and the authority of the executive director to determine whether an appeal should be docketed. The amendments to §§43.2, 43.5, 43.7, 43.14, 43.15, 43.17, 43.21, 43.26, 43.29,43.35, 43.36, and 43.47 reflect minor wording and stylistic changes. The proposed amendments to §43.3 reflect the revision or addition of definition of terms consistent with other provisions of the chapter. The proposed amendments to §43.6 clarify how documents are to be filed after a matter has been referred to SOAH. The proposed amendments to §43.8 clarify how extensions may be requested and granted, depending on whether a matter is pending before SOAH or whether the matter is pending solely before TRS. They also clarify the authority of the executive director to rule in certain circumstances on requests for extensions directed to the board of trustees. The proposed amendments to §43.9 reflect minor wording and stylistic changes. They also permit the executive director to decline to docket an appeal in certain circumstances. They clarify that the executive director's decision not to docket a matter may not be appealed to the board of trustees. They also establish the affirmative duty of a petitioner to prosecute an appeal within a reasonable time, subject to dismissal if the petitioner does not do so. The proposed amendments to §43.10 clarify the authority of the executive director or Medical Board to grant the relief sought by a petitioner and for a SOAH administrative law judge to dismiss a matter from SOAH's docket. The proposed amendments to §43.11 delete language relating to pleadings that is adequately covered by the section relating to definitions. The proposed amendments to §43.12 clarify the requirements for written pleadings, such as inclusion of facsimile or docket numbers when such are available; they also clarify the procedure for objection to the form or sufficiency of a pleading (currently addressed in §43.30 Exceptions, proposed to be repealed) and provide a deadline for such objection. The proposed amendments to §43.13 make minor wording changes and also delete as unnecessary a statement regarding the applicability of SOAH rules. The proposed amendments to §43.16 clarify the procedures applicable to service of certain documents by facsimile or electronic transmission; they also modify the time periods for filing a motion raising additional issues and issuance of notice of such additional issues. The proposed amendments to §43.18 clarify filing procedures applicable to motions for consolidation by requiring filing of the motion in all dockets affected by the motion. The proposed amendments to §43.19 clarify the standard for a person to intervene in a TRS contested case and permit other persons who may be affected by a decision in the case to be joined as parties. The proposed amendments to §43.20 require that if a natural person is represented by another in a contested case proceeding, representation must be by an attorney; they also clarify representation requirements for parties other than natural persons. The proposed amendments to §43.23 delete references to certain specific powers of a presiding hearing officer and replace them with a reference to SOAH rules that outline those powers. The amendments identify certain powers not specifically identified in those rules. The proposed amendments to §43.24 clarify procedures relating to prehearing conferences, including use of witness lists and identification of documentary evidence. The amendments delete the general authority of the administrative law judge to require parties to file written evidentiary statements (such as pre-filed testimony) before the hearing because for the type of issues generally at issue in TRS cases, such a requirement would not be appropriate. Such testimony is proposed to be provided for on a limited basis under §43.28 relating to disability retirement appeals. The amendments to §43.25 delete provisions that repeat provisions of SOAH's rules relating to the conduct of the hearing. Also, the amendments clarify that a petitioner challenging a final administrative decision has the burden of proof. The proposed amendments to §43.27 delete unnecessary requirements relating to exhibits and clarify requirements regarding the need for exceptions to rulings on evidence (currently found in §43.30 relating

to Exceptions, proposed to be repealed). The proposed amendments to §43.28 delete provisions that would permit pre-filed testimony to be required in a proceeding and instead limit the use of such testimony to disability appeal proceedings. Generally, most disputes resolved through TRS contested case hearings involve fact issues and fact witnesses; such testimony is less suitable for pre-filed testimony. However, in appeals relating to disability retirement benefits, expert medical testimony of a technical nature is more likely to be offered, and such testimony is more suitable for pre-filed testimony. Additionally, Government Code §824.303 requires the TRS Medical Board to certify disability, and in order to do so, the Medical Board must be provided an opportunity to review all information a petitioner submits in support of an appeal. The amendments provide a mechanism for the Medical Board to do so. The proposed amendments to §43.33 require that a petitioner appear for hearing, either in person or through an attorney, subject to a default judgment. The amendments clarify that a default judgment may not be taken against a third party petitioner or respondent for failure to appear. The proposed amendments to §43.34 delete specific provisions relating to conduct at the hearing and replace them with broader language that will adequately cover situations. The proposed new §43.37 establishes procedures for the assessment of transcript or certified language interpreter costs against parties in appropriate situations. For some hearings, SOAH rules require TRS to pay for the services of a court reporter and possibly a transcript. The amendments would authorize TRS to use less expensive means for producing a transcript or assessing costs against parties who object to the less expensive means and move for more expensive means for recording a hearing. Additionally, SOAH rules provide that an agency may assess the cost of a certified language interpreter to the party requesting one; the amendments provide for an assessment of costs by TRS consistent with SOAH rules. The proposed amendments to §43.38 add "laches" as a grounds for dismissal of a claim in order to permit dismissal of old, stale claims. They also clarify that a petitioner is required to appear for a hearing and make minor wording changes to update terminology. The proposed amendments to §43.39 update terminology relating to summary disposition and clarify the procedures for filing exceptions to a proposal for decision on summary disposition. The proposed amendments to §43.40 delete the itemized list of matters included in the record of a contested case since Government Code §2001.060 specifically addresses this topic. The proposed amendments to §43.41 clarify that findings of fact shall be based on admitted evidence. The proposed amendments to §43.42 specifically provide for authority of the executive director or board of trustees to order a hearing reopened and to remand a matter to SOAH. The proposed amendments to §43.43 revise procedures and requirements relating to the issuance of subpoenas and commissions in accordance with state law. The proposed amendments to §43.44 delete specific provisions relating to discovery and replace them with a reference to applicable SOAH rules relating to discovery in contested case proceedings. The proposed amendments to §43.45 clarify procedures for and content of exceptions to a proposal for decision; authority of the executive director or board in different types of proceedings to rule on exceptions and issue a final decision; opportunity for appeal of decisions to the board of trustees; and finality of a decision if a party fails to exhaust administrative remedies. The proposed amendments to §43.46 clarify and expand on procedures relating to motions for rehearing by reference to statutory provisions applicable.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the proposed new section and sections as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as amended or the repeals.

Mr. Jung, Deputy Director, has also determined that the public benefit of the amended and new sections will be clarification of applicable contested case procedures, greater coordination with the rules of SOAH as recently amended, and more efficient procedures. He has also determined that there generally will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the sections as proposed for each year of the first five years the proposals or repeals will be in effect. Some sections, however, may result in some economic costs in some cases. The proposed new §43.37 (concerning the recording of the hearing and the use of a certified language interpreter) would permit TRS to assess the cost of a stenographic recording or transcript against a party and would permit a party who desires the services of a certified language interpreter to arrange for one but would require that party to pay for any such services. This proposed section could result in some economic costs to persons participating in a contested case proceeding, but the amount of the costs would vary depending on length of the hearing and nature of the services for which expenses are incurred, as well as the number of hearings in which the costs for such services are assessed against the parties. It is impossible to estimate the overall costs to persons required to comply with this section for the first five years the section will be in effect. The proposed amendments to §43.43, concerning Subpoenas (to be re-named Subpoenas and Commissions), would require a person requesting issuance of a subpoena or commission to pay fees required by law. This section could result in some economic costs to persons participating in contested case proceedings, but the costs are established by statute and would depend on applicable factors, such as witness location, as well as the number of cases in which such fees would need to be assessed; therefore, it is impossible to estimate the overall costs to persons required to comply with the section during the first five years it will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The amendments and new section are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board. The amendments and new section are also proposed under Government Code Chapter 2001, the Administrative Procedure Act, and Section 825.115, which provides that the board is subject to Chapter 2001. The amendments and new section also are proposed in conjunction with Government Code Chapter 2003, relating to SOAH, which authorizes SOAH to conduct hearings for certain state agencies; Government Code §2001.060, which describes the record in a contested case; Government Code §§2001.089, 2001.094, and 2001.103 relating to issuance of a subpoena or commission and payment of witness fees; Government Code §§2001.144-146 relating to motions for rehearing; Government Code Chapter 824, §824.307, and Chapter 825, §825.204, which provide for Board review of actions of the Medical Board; and Government Code §824.303, which authorizes the Medical Board to certify the disability of a member.

No other laws are affected by these proposed changes.

§43.1. Administrative Review of Individual *Requests*[~~*Complaints*~~].

(a) Organization. The Teacher Retirement System of Texas (TRS) is divided into administrative divisions, which are further divided into departments, for the efficient implementation of its duties. Any person who desires any action from TRS must consult with the proper department within TRS and comply with all proper requirements for completing forms and providing information to that department.

(b) Final administrative decision by chief officer. In the event that a person is adversely affected by a[~~not satisfied with the~~] determination, decision, or action of department personnel, the person may make a request [~~complain~~] to the appropriate manager [~~supervisors~~] within the department and then to the chief officer of the division. The chief officer shall mail a final written administrative decision, which shall include a statement that the person may appeal the decision to the executive director and the deadline for doing so. A person adversely affected by a decision of a chief officer [~~If not satisfied after consulting with the proper supervisory personnel, the person~~] may appeal the decision to the executive director of TRS as provided in §43.5 of this chapter (relating to Request for Adjudicative Hearing). The executive director shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of the chapter (relating to Docketing of Adjudicative Hearing, Dismissal, and SOAH Authority). [~~administrative head of the appropriate division within the time period established by the supervisory personnel. The chief officer or equivalent person of the appropriate division shall mail a written final administrative decision.~~]

(c) Final administrative decision by Medical Board. In the event that the Medical Board does not certify disability of a member under Government Code, §824.303(b), or the Medical Board certifies that a disability retiree is no longer mentally or physically incapacitated for the performance of duty under Government Code, §824.307(a), the member or retiree may request reconsideration and submit additional information to the Medical Board. The Medical Board shall consider a request for reconsideration and additional information and make a determination on the disability of the member or retiree. If a request for reconsideration has been denied, a member or retiree may appeal an adverse final administrative decision of the Medical Board to the TRS Board of Trustees by requesting an adjudicative hearing. A final administrative decision of the Medical Board shall include a statement of whether the member or retiree may request additional reconsideration or may appeal the decision to the board, as well as the deadline for doing so. The executive director is authorized to determine whether an appeal of a Medical Board decision should be docketed and to make other procedural decisions relating to such an appeal.

(d) Applicability. The procedures of this chapter apply only to administrative decisions, appeals, and adjudicative hearings relating to the TRS pension plan, unless rules relating to other programs specifically adopt by reference the provisions of this chapter.

§43.2. Effect of Invalidity of Rule.

If any provision [~~provisions~~] of this chapter [~~section~~] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that [~~section which~~] can be given effect without the invalid provision or application, and to this end the provisions of this chapter [~~section~~] are severable.

§43.3. Definitions.

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

(1) Adjudicative hearing--An evidentiary hearing in a contested case, as provided by Government Code, §2001.051.

(2) Administrative law judge--An individual appointed to conduct the adjudicative hearing in a contested case.

(3) Appeal--A formal request to the executive director or board, as applicable under this chapter, to reverse or modify a final administrative decision by a chief officer or the Medical Board.

(4) [~~(1)~~]Board--The Board of Trustees of the Teacher Retirement System of Texas (TRS).

(5) [~~(2)~~] Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by TRS [~~the Teacher Retirement System~~]after an opportunity for adjudicative hearing.

(6) [~~(3)~~] Executive director--The executive director of TRS; when [~~the Teacher Retirement System of Texas. When~~] the executive director determines that a need exists, the executive director at his or her discretion may designate [~~appoint~~] a person to accomplish the duties assigned in this chapter to the executive director.

(7) Final administrative decision--An action, determination, or decision by a chief officer or the Medical Board, as applicable, based on review of a person's request on an administrative basis (*i.e.*, without an adjudicative hearing).

(8) Final decision of TRS--A decision that may not be appealed further within TRS, either because of exhaustion of all opportunities for appeal within TRS or because of a failure to appeal the decision further within TRS in the manner provided for in this chapter.

(9) Hearing--The trial-like portion of the contested case proceeding that is handled by SOAH after referral of a matter by TRS.

(10) Medical board--The medical board appointed by the TRS board of trustees under Government Code, §825.204.

~~[(4) Hearing Officer - Any person appointed by the executive director, or by the State Office of Administrative Hearings (SOAH), to conduct a contested case hearing.]~~

(11) [~~(5)~~] Member--A person who is a member, retiree, or beneficiary of TRS [~~the Teacher Retirement System~~].

(12) [~~(6)~~] Order--The whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of [~~a hearing officer,~~] the executive director[~~,~~] or the board in a contested case.

(13) [~~(7)~~] Party--Each person named or admitted in a contested case.

(14) [~~(8)~~] Person--Any natural person or other legal entity.

(15) [~~(9)~~] Pleading--A written document that is submitted by a party, by TRS staff, or by a person seeking to participate in a case as a party and that requests procedural or substantive relief, makes claims or allegations, presents legal arguments, or otherwise addresses matters involved in a contested case. [~~allegation by the parties or the Teacher Retirement System of Texas of their or its respective claims. Pleadings may take the form of applications, petitions, appeal letters, complaints, briefs, exceptions, replies, motions, notices, or answers.~~]

(16) SOAH--The State Office of Administrative Hearings.

(17) State Office of Administrative Hearings--The state agency established by Chapter 2003, Government Code, to serve as the forum for the conduct of adjudicative hearings.

(18) Third party respondent or petitioner--A person joined as an additional party to a proceeding; a party shall be designated as either a third party respondent or third party petitioner based on whether the person opposes the action requested in the petition or supports it.

(19) [~~(10)~~] TRS--The Teacher Retirement System of Texas.

(20) [~~(11)~~] Trustee--One of the [~~elected or appointed~~] members of [~~the decision making body defined as~~]the board.

(21) [~~(12)~~] With prejudice--Barring a subsequent contested case on the same claim, allegation, or cause of action[~~Final and binding~~].

§43.4. Decisions Subject to Review by an Adjudicative Hearing.

A [~~Any interested~~] person adversely affected by a final administrative decision of TRS relating to the pension plan may [~~shall be entitled to~~] appeal the decision and request an adjudicative hearing [~~of a chief officer or designee~~]with regard to the following:

(1) any matter related to a member's service or disability retirement, death or survivor benefits, or request for refund of accumulated contributions;

(2) the eligibility of a person for membership in TRS;

(3) the amount of annual compensation credited by TRS;

(4) the amount of deposits or fees required of a member;

(5) any matter involving the granting, purchase, transfer, or establishment of service credit;

(6) any application for correction of error in the file of a member, [~~or~~]beneficiary, or alternate payee, other than a determination of whether an order is a qualified domestic relations order;

(7) the cancellation or suspension of retirement, survivor, or death benefits; or

(8) any other matter affecting eligibility for retirement and related disability and death benefits or the amount of such benefits payable under the laws governing TRS.

§43.5. Request for Adjudicative Hearing.

On a matter over which TRS has jurisdiction and authority to grant relief, a party may appeal a [~~the~~] final administrative decision [~~of a chief officer or designee~~] by filing a petition for adjudicative hearing with the executive director no later than [~~within~~] 45 days after [~~from~~] the date the [~~chief officer's or designee's~~] final administrative decision is mailed. The petition shall [~~should~~] conform to the requirements of §43.12 of this chapter [~~title~~] (relating to Form of Petitions and Other Pleadings.)

§43.6. Filing of Documents.

All documents relating to any appeal [~~proceeding~~] pending or to be instituted before the executive director or the board shall be filed with the executive director [~~or hearing officer~~] at TRS, 1000 Red River Street, Austin, Texas 78701-2698. If the executive director has docketed an appeal and referred it to SOAH for an adjudicative hearing, documents shall be filed with SOAH and a copy provided to the TRS docket clerk during the time the matter is pending at SOAH.

§43.7. Computation of Time.

In computing any period of time prescribed or allowed by this chapter [~~section~~], by order of the executive director or board, or by any applicable statute, the period shall begin on the day after the act, event, or default in question, and it shall conclude on the last day of that designated period, unless the last day [~~it~~] is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that[~~which~~] is not[~~neither~~] a Saturday, Sunday, or[~~nor~~] a legal holiday.

§43.8. Extensions.

Unless otherwise provided by statute, the time for filing pleadings or other documents [~~any of the documents mentioned in this section~~] may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with its filing. In the case of filings that [~~which~~] initiate a proceeding or that [~~which~~] are made before an appeal has been referred to SOAH[~~a hearing officer has been assigned the matter~~], the executive director will determine whether good cause exists and whether an extension should be granted. In the case of filings made in a proceeding after TRS has referred the appeal to SOAH [~~a SOAH hearing officer has been assigned the matter~~], rules governing hearings before SOAH will control so long as the matter is before SOAH. For matters returned by SOAH to TRS, either through dismissal from the SOAH docket or through issuance of a proposal for decision, the executive director may determine whether good cause exists and whether an extension should be granted. The executive director is authorized to rule on motions for extensions on matters directed to the Board if no Board meeting is scheduled before the expiration of the applicable period of time.

§43.9. Docketing of Adjudicative Hearing, Dismissal, and SOAH Authority.

(a) On an appeal [~~a matter~~] over which TRS has jurisdiction and authority to grant reliefand that otherwise complies with this chapter, the executive director shall assign the petition a TRS docket number, provide all parties notice of the docket number, and [~~appoint a hearing officer or~~] refer the matter to the State Office of Administrative Hearings [~~which shall assign an administrative law judge~~] for an adjudicative [~~a~~] hearing [~~in accordance with the law and SOAH rules~~].

(b) The executive director may decline to docket an appeal [~~dismiss matters~~] over which TRS has no jurisdiction or no authority to grant relief, that is not timely filed, or that otherwise fails to comply with this chapter. The executive director may also decline to docket a matter for which a contested case hearing is not required by law or for which other available procedures are more appropriate. The executive director's decision declining to docket an appeal is the final decision of TRS when the circumstances described in §2001.144, Government Code, are met. A person may not appeal such decision to the board.

(c) Prior to docketing an appeal, the executive director or his[~~a~~] designee may review the petition [~~pleadings~~] filed with TRS to determine the sufficiency. If the petition does [~~pleadings do~~] not materially comply with this chapter [~~these rules~~], the executive director shall return the petition [~~pleadings~~] to the person who filed it [~~filing them~~], along with reasons for the return. The person shall be given a reasonable time (not to exceed 90 days) to file a corrected petition[~~pleadings~~]. If the petition is [~~pleadings are~~] not corrected to substantially comply with this chapter within the time given [~~the rules~~], the executive director may decline to docket the appeal [~~dismiss the complaint with prejudice~~].

(d) When a contested case is referred to SOAH and during the period of time the case is before SOAH, the adjudicative hearing rules for SOAH (1 TAC Chapter 155) shall apply unless inconsistent with applicable statutes or constitutional provisions [~~be in force and will be followed should there be any conflict between those rules and these~~].

(e) A party that files an appeal and causes a matter to be docketed and referred to SOAH shall have the responsibility of prosecuting the appeal within a reasonable time period. TRS may seek dismissal with prejudice of an appeal if a responsible party fails to obtain a setting for a hearing on the merits within two years of referral of the

matter to SOAH[~~The executive director may dismiss a petition that is not timely filed in accordance with these rules~~].

§43.10. Authority to Grant Relief.

At any time before an appeal is referred to SOAH[~~after the petition is filed and before the hearing is conducted~~], the executive director or, in the matter of certification for disability retirement, the Medical Board may grant the relief sought by the petitioner and dismiss [~~seek dismissal of~~] the appeal [~~case~~], provided that the interest of other individual parties are not adversely affected. After a matter has been referred to SOAH, the [~~The~~] SOAH administrative law judge[~~hearing officer~~] may dismiss the case from the SOAH docketin accordance with SOAH rules.

§43.11. Classification of Pleadings.

[~~Pleadings filed with the executive director shall be appeal letters, notices, applications, appeals, claims, answers, exceptions, replies, motions, or briefs.~~] Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

§43.12. Form of Petitions and Other Pleadings.

(a) Petitions, briefs, and other pleadings shall be typewritten or printed on paper not to exceed 8 1/2 inches by 11 inches with an inside margin of at least one inch width. Annexed exhibits shall be folded to the same size. Only one side of the paper shall be used. Reproductions may be used, provided all copies are clear and permanently legible.

(b) The pleadings shall state their object and shall contain a concise statement of the supporting facts. The petition appealing a final administrative decision and requesting [~~for~~] an adjudicative hearing shall specify the action desired from TRS and shall be filed with TRS, directed to the attention of the executive director.

(c) The original of any pleading filed with TRS shall be signed in permanent ink by the party filing it or by his authorized representative. Pleadings shall contain the address and telephone [~~phone~~] number of the party filing the documents or the name, telephone number, facsimile number, and business address of counsel.

(d) The original petition for an adjudicative hearing should also include the name, address, and telephone number of petitioner and [~~appellant,~~] the name, address, telephone number and, if known, the tax number of any member whose interest or whose beneficiary's interest may be involved in the case. The petition should further identify all persons who may have a material interest in the outcome of the case, the basis for that interest, and such person's last known address and telephone number. If such information is not provided on the original petition, the executive director, board of trustees, or administrative law judge [~~presiding hearing officer~~] may require submission of such information before proceeding with the hearing.

(e) Pleadings should be styled: "Petition of (Name of Petitioner)." If a TRS or SOAH docket number has been assigned, pleadings shall contain the docket number.

(f) All pleadings shall contain the following:

(1) the name of the party filing the pleading [~~supporting or opposing the action of the division head~~];

(2) a concise statement of the facts relied upon by the party [~~appellant~~];

(3) a request [~~prayer~~] stating the type of relief, action, or order desired by the party [~~pleader~~];

(4) a certificate of service conforming to subsection (g) of this section; and

(5) any other matter required by statute.

(g) Written pleadings other than the original petition should be served by mail or personal delivery upon all other known parties of record, and a certification of such service should be submitted with the original copy of the pleading filed with TRS. If a party is represented by an attorney, service [~~Service~~] may be made upon a party by serving the [~~his~~] attorney of record [~~in the case~~]. The following form of certification will be sufficient: "I hereby certify that I have this _____ day of _____, 20__, [~~19~~__] served copies of the foregoing pleading upon all other parties to this proceeding, by (state the manner of service). Signature."

(h) A party may object to the form or sufficiency of a pleading by filing the objections in writing at least 15 days before the hearing date. If the objections are sustained, the administrative law judge shall allow a reasonable time for amendment.

§43.13. Filing of Pleadings and Amendments.

(a) Any party to a case may file answers, amendments to pleadings (as permitted by this chapter) [~~(provided it does not act as a surprise to the opposite party)~~], and motions that [~~which~~] conform to the requirements of this chapter [~~section~~]. Any amendment that [~~which~~] operates as a surprise to any other party may be allowed [~~granted~~] only upon a written motion showing no harm will result. Failure to file an answer shall in no case result in a default judgement.

(b) The filing of motions, answers, amended pleadings, and corrected pleadings shall not be permitted to delay any hearing unless the executive director, board of trustees, or administrative law judge [~~presiding hearing officer~~] determines that such delay is necessary in order to prevent injustice or to protect the public interest and welfare.

[~~(c) When a hearing is before a SOAH hearing officer, the rules for SOAH dealing with this subject shall be in force and will be followed should there be any conflict between those rules and these.~~]

§43.14. Briefs.

Briefs shall conform, where practicable, to the form requirements of pleadings set out in this chapter [~~section~~]. The points involved shall be concisely stated, the allegations in support of each point shall be summarized, and the argument and authorities shall be organized and directed to each point in a concise and logical manner.

§43.15. Motions.

A motion, unless made during a hearing, shall be made in writing, set forth the relief or order sought, state the[~~the specific recourse and~~] grounds for such relief, and be timely filed with SOAH or TRS, as applicable. A [~~the hearing officer. If parties have been designated, a~~]copy shall be served [~~furnished~~] by the movant on [~~to~~] each [~~applicant, appellant, and other~~] party of record. Any reply to the motion shall be timely filed with SOAH or TRS, as applicable, [~~the hearing officer~~] with a copy served on the movant and other parties of record. Failure to serve [~~furnish~~] copies may be grounds for withholding consideration of the motions or replies. Unless otherwise directed by the administrative law judge, executive director, or board [~~hearing officer~~], motions based on matters which do not appear of record must be supported by affidavit. When necessary, [~~in the judgment of the hearing officer,~~] a hearing will be held to consider any motion.

§43.16. Notice of Hearing and Other Action.

(a) Notices of hearing, proposals for decision, and all other rulings, orders, and actions by SOAH or TRS shall be served upon all parties or their attorneys of record in person or at their last known address by mail. Service by mail is complete upon deposit in the mail, properly addressed, with postage prepaid. Service may also be accomplished by electronic mail or facsimile transmission if all parties agree. In that case, the sender shall retain [~~also file~~] the original of the document and file it upon request with the administrative law judge or the

executive director, as applicable. Upon request, [~~hearing officer and~~] the sender has the burden of proving the date and time of receipt of the document served by facsimile transmission or electronic mail. Electronic mail may not be used with documents produced pursuant to a discovery request. On motion by any party or on its own motion, TRS may serve notice of a hearing on any person whose interest in the subject matter will be directly affected by the final decision in the case.

(b) All initial hearing notices shall include the following:

(1) a statement of time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short, plain statement of the matters asserted. If TRS or a [~~the agency or other~~] party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon written application filed not less than ten [~~five~~] days before the date set for hearing, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing.

(c) After service of the initial notice, any party wishing to raise issues or matters not set forth in the initial notice must do so by filing a motion which sets forth such issues or matters not less than 30 [~~10~~] days before the date set for hearing. If the motion is granted, the administrative law judge [~~hearing officer~~] shall give notice, not less than 20 [~~three~~] days before the date of hearing, of the additional issues and matters to be decided in the contested case.

(d) All other notices in a contested case shall set forth only the additional issues and matters to be decided.

§43.17. Agreements To Be in Writing.

No stipulation or agreement between the parties, their attorneys, or representatives, with regard to any matter involved in any proceeding governed by this chapter, shall be enforced unless it shall have been reduced to writing and signed by the parties or the representatives authorized by this chapter [~~section~~] to appear for them, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated into an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by this chapter, unless precluded by law.

§43.18. Motion for Consolidation.

A motion for consolidation of two or more appeals, applications, petitions, or other proceedings shall be in writing, signed by the movant or[~~, his~~] the movant's attorney [~~or representative~~], and filed with SOAH or TRS, as applicable, [~~the hearing officer~~] prior to the date set for hearing. The motion shall state the number and style of all proceedings sought to be consolidated, and the movant shall file a copy of the motion in each proceeding. No two or more appeals, applications, petitions, or other proceedings shall be consolidated or heard jointly without the consent of all parties to all such proceedings unless the administrative law judge or executive director [~~hearing officer~~] shall find that the two or more appeals, applications, petitions, or other proceedings involve common questions of law or fact, or both, and shall further find that separate hearings would result in unwarranted expense, delay, or substantial injustice. Special hearings on separate issues may also be allowed.

§43.19. Additional Parties[~~Intervention~~].

(a) Intervention. A [~~Any interested~~] person who may be affected by a decision of TRS in the proceeding may file [~~desiring to intervene in any proceeding before the board may appear formally before the board, by filing~~] a written motion to intervene at least 15 days in advance of the hearing date. The person may request an opportunity to [~~, and it may~~] present any relevant, material, and proper testimony and evidence bearing upon the request to intervene. [~~issues involved in the particular proceeding. In any proceeding involving notice of less than 30 days, this time for filing may be modified.~~]

(b) Joinder of parties. A party may move to join other persons as parties to the proceeding if they may be affected by a final decision of TRS. A motion to join other parties shall identify the person by name, address, and telephone number; shall state the nature of the other person's relationship to the proceeding or potential interest in the proceeding; and shall state why the person is needed for the just adjudication of the appeal or other grounds for the motion. The motion shall also state whether joinder of the person is feasible. If the motion is granted, the person shall be a party to the proceeding.

§43.20. Appearance and Representation [~~by Attorney~~].

(a) A party or person seeking to be admitted as a party may appear at a hearing or prehearing conference in person or by an attorney. A natural person may not be represented by another person who is not an attorney. An entity other than a natural person that is a party or that seeks to be admitted as a party may appear through a person with legal authority to act on behalf of the entity, such as an officer, director, or trustee, or may be represented by an attorney.

(b) An [~~Any party may appear and be represented by an~~] attorney representing a person or party in a proceeding must be authorized to practice law in the court of highest jurisdiction of any state of the United States or the District of Columbia. The attorney of record of any party shall be the attorney who signs the first pleading filed on behalf of the party or who files with TRS or SOAH a written notice signed by the party designating the attorney as attorney of record in the case. An attorney appearing on behalf of a party may be required to show authority to act for the party. [~~He or she shall be considered to have continued as attorney of record to the end of the proceeding with TRS unless there is a statement to the contrary appearing in the record.~~] Nothing in this chapter shall be interpreted to require a party to the hearing to be represented by counsel.

§43.21. Lead Counsel.

A party represented by more than one attorney in a proceeding [~~matter before TRS~~] may be required to designate a lead counsel who shall have control in the management of the matter. The administrative law judge, executive director, or board [~~hearing officer~~] may limit the number of counsel heard on any matter.

§43.23. Powers of the Administrative Law Judge [~~Hearing Officer~~].

The presiding administrative law judge [~~hearing officer~~] shall have the authority established by applicable statutes and by the procedural rules of SOAH, 1 TAC, Chapter 155. Additionally, the administrative law judge may [~~to:~~]

[~~(1) convene the hearing;~~]

[~~(2) administer oaths to all persons presenting testimony;~~]

[~~(3) rule on motions;~~]

[~~(4) rule on the admissibility of evidence;~~]

[~~(5) establish the order of presentation of evidence;~~]

[~~(6) examine witnesses;~~]

[~~(7) set hearing dates;~~]

[~~(8) set prehearing conferences;~~]

[(9) issue subpoenas when required to compel the attendance of witnesses, or the production of papers and documents related to the hearing;]

(1) [(10)] determine [define] the jurisdiction of TRS concerning the matter under consideration;

(2) determine the scope of the matter referred to SOAH; and

(3) [(11)] limit testimony to matters [matter] under TRS's jurisdiction and to matters referred to SOAH by TRS.[;]

[(12) recess or continue any hearing over which he or she is presiding from time to time and from place to place;]

[(13) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing any rights of parties to the proceeding;]

[(14) exercise any other appropriate powers necessary or convenient to carry out his or her responsibilities; and]

[(15) to extend the time for the decision date.]

§43.24. Prehearing Conference and Orders.

(a) The administrative law judge [hearing officer] may hold a prehearing conference prior to any adjudicative hearing. [The hearing officer shall set the time and location of the conference and give reasonable notice thereof to all parties. At the discretion of the hearing officer, persons other than parties may attend prehearing conferences. At the discretion of the hearing officer, additional prehearing conferences may be scheduled.]

(b) At the prehearing conference or by prehearing conference order, the administrative law judge may require parties to file and serve the following in order to expedite the hearing: [The hearing officer may direct that one or more of the following be transmitted by each party to all other parties or their representatives and to the hearing officer by a date established by the hearing officer.]

(1) a list of witnesses the party intends [desires] to have testify, with a brief narrative summary of their expected testimony;

(2) a written statement of the disputed issues or[for consideration at the hearing];

[(3) a copy of any written statements to be offered at the hearing; or]

(3) [(4)] a copy of any [other written testimony or]documentary evidence the party intends to use at the hearing.

(c) Witnesses and proposed documentary [written] evidence may be added and narrative summaries of expected testimony amended at the hearing only upon a finding of the administrative law judge [hearing examiner] that good cause existed for failure to serve [exchange] the additional or amended material by the established date.

(d) At any prehearing conference, or in a [the] prehearing conference order, the administrative law judge [summary, the hearing officer]:

(1) may obtain stipulations and admissions, and otherwise identify matters on which there is agreement;

(2) shall identify disputed issues for consideration at the hearing;

(3) may consider and rule prospectively upon objections to the introduction into evidence at the hearing on the merits of any written testimony, documents, papers, exhibits, or other materials;

(4) may identify matters of which official notice may be taken;

(5) may strike issues not material or not relevant, including issues not within the scope of the matter referred by TRS; and

(6) may consider any other matter that may expedite the hearing or aid in the disposition of the matter.

(e) A prehearing conference may be held by means of a conference telephone call.

(f) Rulings or decisions made at a [The results of any] prehearing conference shall be summarized in a written order [writing] by the administrative law judge [hearing officer] and made part of the record.

§43.25. Conduct of Hearing.

(a) A hearing [All hearings] shall be open to the public except for parts of any proceeding in which confidential information in a member's file may be disclosed. The member may expressly waive his right to maintain confidentiality of the information before the proceedings will be opened to the public.

(b) All hearings will be held in Austin, Texas unless all parties agree to another site.

[(c) The hearing officer shall open the hearing and make a concise statement of its scope and purposes. Once the hearing has begun, parties or their representatives may be off the record only when the hearing officer permits. If a discussion off the record is pertinent, the hearing officer may summarize such discussion for the record. Appearances are to be entered on the record by all parties, their attorneys, or representatives, and any person who may testify during the proceedings. All persons present who may testify will then be placed under oath. Thereafter, parties may make motions or opening statements.]

(c) [(d)] The petitioner has the burden of proving by a preponderance of the evidence that the relief sought in the petition should be granted. The petitioner shall present his or her direct case first at hearing. [Following opening statements, if any, by both sides, the petitioner shall be directed to proceed with his or her direct case.]

(d) [(e)] Where the proceeding is initiated at the executive director's or the board's own call, or where several proceedings are heard on a consolidated record, the administrative law judge [officer] shall designate who shall open and close and at what stage intervenors or other parties shall be permitted to offer evidence.

[(f) Opportunity for cross-examination and presentation of a direct case shall be afforded all parties of record. After all parties have completed the presentation of their evidence, and been afforded the opportunity to cross-examine the opposition witnesses, closing statements may be allowed. The petitioner shall be entitled to open and close.]

(e) [(g)] The administrative law judge [hearing officer] may [also] call upon any party or staff of TRS for further material or relevant evidence upon any issue before the issuance of a proposal for decision; however, no such evidence shall be allowed into the record without an opportunity for inspection, cross-examination, and rebuttal by the other interested parties.

[(h) During any part of the direct or cross-examination of a witness, the hearing officer may ask the witness questions.]

(f) [(i)] At the request of a party, the administrative law judge [hearing officer] shall order the witnesses excluded so that they cannot hear the testimony of other witnesses[, and the hearing officer may make the order of its own motion]. This section does not authorize exclusion of a party.

(g) During the hearing, formal exceptions to rulings of the administrative law judge are not required. It shall be sufficient that a party, at the time of any ruling is made or sought, shall make known to the administrative law judge the action sought.

§43.26. General Admissibility.

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of Texas shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by a reasonably prudent person in the conduct of the person's [~~their~~] affairs. The administrative law judge [~~hearing officer~~] shall give effect to the rules of privilege recognized by law.

(b) When testimony is excluded by ruling of the administrative law judge [~~hearing officer~~], the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing. Such offer of proof shall be sufficient to preserve the point for review. The administrative law judge [~~presiding hearing officer~~] may ask questions of the witness as he or she deems necessary to satisfy himself or herself that the witness would testify as presented in the offer of proof.

§43.27. Exhibits.

(a) Exhibits of documentary character shall be of a size which will not unduly encumber the files and records of TRS and whenever practicable, shall conform to the requirements set forth in §43.12 of this chapter [~~title~~](relating to Forms of Petitions and Other Pleadings). [~~The first page of the exhibit shall contain a statement of what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.~~]

(b) The original of each exhibit offered shall be tendered to the court reporter or administrative law judge [~~clerk~~] for identification; one copy shall be furnished to the administrative law judge [~~presiding hearing officer~~] and one copy to each other party of record or his attorney of record.

(c) In the event an exhibit has been identified, objected to, and excluded, the administrative law judge [~~presiding hearing officer~~] shall determine whether the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to that party. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the administrative law judge [~~hearing officer~~] with the [~~his~~] ruling, and shall be included in the record for the purpose only of preserving the exception.

(d) Unless specifically permitted by the administrative law judge, [~~hearing officer~~] no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing. In the event the administrative law judge [~~hearing officer~~] allows an exhibit to be filed after the conclusion of a hearing, copies of the late-filed exhibit shall be served on all parties of record.

§43.28. Pre-filed Direct [~~Admissibility of Prepared~~] Testimony in Disability Appeal Proceedings.

(a) In a contested case concerning Medical Board denial of certification of disability or a finding that a disability retiree is no longer mentally or physically incapacitated from the performance of duty, all testimony and other evidence, including medical or employment records, that the petitioner intends to offer in petitioner's direct case shall be pre-filed at least 90 days before the date of the hearing on the merits. Testimony shall include all expert and fact witnesses, including that of a petitioner who intends to testify. In order to avoid any unnecessary expense and time associated with adjudicative hearings and in accordance with Government Code, Section 824.303, which requires Medical Board certification in order for a person to be retired, TRS staff shall be given adequate opportunity to present such information to the Medical Board for consideration before the hearing on the merits. If, upon consideration of the information petitioner intends to offer at hearing, the Medical Board certifies the person as disabled, TRS staff or petitioner may move for dismissal of the appeal. If, however, the Medical Board does not certify the person as disabled, the petitioner may continue to prosecute the appeal as previously docketed and referred to SOAH. The petitioner shall not be permitted to introduce direct testimony and evidence that has not been pre-filed and made available to the Medical Board for consideration.

(b) [~~When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form.~~] The pre-filed [~~prepared~~] testimony of a witness upon direct examination shall be in [~~, either in a narrative or~~] question and answer form. The qualifications of an expert witness shall be described in question and answer testimony or by attachment of a resume as an exhibit to the testimony. Pre-filed testimony of a witness may be offered into the record by a party during its direct case. The testimony shall not be admitted into the hearing record in whole or in part unless the witness is available at the hearing on the merits and, upon being sworn, identifies the pre-filed testimony as a true and accurate record of what his or her testimony would be if the witness were testifying orally. A witness may be given an opportunity to correct errors. After calling the witness and authenticating the testimony in this manner, a party may offer the testimony into the record. Pre-filed testimony is subject to the rules of evidence, including objections or motions to strike when such testimony is offered, as if the testimony were presented orally at a hearing. Such testimony, if admitted, may be incorporated in the record as if read or received as an exhibit. [~~, upon the witness's being sworn and identifying the same as a true and accurate record of what his testimony would be if he were to testify orally.~~] The witness shall be subject to cross-examination by other parties after the admission of the pre-filed testimony in whole or in part, and the party offering the testimony may conduct re-direct examination of the witness at the conclusion of cross-examination. [~~and his/her prepared testimony shall be subject to being stricken either in whole or in part.~~]

(c) Pre-filed documentary evidence other than testimony of witnesses may be offered into the record by a party during its direct case. All pre-filed documentary evidence is subject to the rules of evidence.

§43.29. Limit on Number of Witnesses.

The administrative law judge [~~hearing officer~~] shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

§43.33. Failure to Appear.

The petitioner [~~Except for good cause and extenuating circumstances, the appellant~~] or the petitioner's attorney [~~his authorized representative~~] shall appear at the hearing. Failure to so appear may be grounds for withholding consideration of a matter, denial of the appeal with or [~~matter~~] without prejudice, or dismissal of the appeal. However, no default judgment may be taken against a third party petitioner or respondent for failure to appear.

§43.34. Conduct and Decorum at Hearing.

Every [~~party, authorized representative, witness, or other~~] participant in the proceedings shall conduct himself with proper dignity, courtesy, and respect for SOAH, TRS, [~~the parties, witnesses, and~~] all other participants, and all other persons attending the proceedings. TRS or SOAH may take such action as appropriate and necessary to enforce this rule. [~~Disorderly conduct will not be tolerated. Attorneys must conform to the standards of ethical behavior required by the Code of~~

~~Professional Responsibility of the State Bar of Texas. In a matter heard by a hearing officer, violation of this section shall be sufficient cause for the officer to recess the hearing and to request that TRS take appropriate action. TRS may deny the offending person the right to participate further in the proceeding for such period of time and under such conditions as may be just and reasonable or may take such other action as it deems just and reasonable.~~]

§43.35. Official Notice.

Official notice may be taken of all facts judicially cognizable. In addition, official notice may be taken of generally recognizable facts within the specialized [~~special~~] knowledge of TRS [~~the agency~~]. All parties shall be notified either before or during the hearing, or by reference in preliminary reports, drafts of orders, or otherwise, of any material officially noticed, including any staff memoranda or data. All parties will be afforded an opportunity to contest the material so noticed.

§43.36. Ex Parte Consultations.

Unless required for the disposition of ex parte matters authorized by law, the executive director, the administrative law judge [~~any hearing officer~~], and any member of the board [~~Board of Trustees~~] who may render a decision that may become final under this chapter [~~Chapter~~] or make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. To the extent permitted by law, the executive director, the administrative law judge [~~any hearing officer~~], and any member of the board [~~Board of Trustees~~] who may render a decision that may become final under this chapter [~~Chapter~~] or make findings of fact and conclusions of law in a contested case, may communicate ex parte with employees of TRS who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of TRS [~~the agency~~] and its staff in evaluating the evidence.

§43.37. Recording of the Hearing; Certified Language Interpreter.

(a) A record of a hearing or prehearing conference shall be made in a manner consistent with the purpose of 1 TAC, §155.43. Because of the nature of TRS proceedings and the expense of stenographic recordings and transcripts, it is the policy of TRS to rely on a audio or video recording as the official record of the proceeding, regardless of the anticipated length of the hearing.

(b) TRS may assess the cost of preparation of a stenographic recording or transcript against a party requesting such, or against other parties as appropriate. Cost of a transcript copy ordered by a party shall be paid by that party. TRS may require a deposit or full payment of the estimated costs by a party against whom costs have been assessed in advance of arranging for a court reporter to be present at the hearing or in advance of preparation of the transcript. If no party requests stenographic recording of a proceeding or preparation of a transcript by a court reporter but the administrative law judge so requires, TRS may assess the cost to one or more parties or may request that TRS not be required to bear the costs.

(c) In the alternative to a stenographic recording or transcript prepared by a court reporter, TRS may prepare a transcript from a video or audio tape of the proceeding. The transcript prepared by TRS may be considered the official record of the proceeding. TRS may obtain the official audio or video recording from SOAH for purposes of preparing the transcript. A party who objects to a TRS-prepared transcript and requests that proceedings be stenographically recorded or transcribed by a court reporter may be required to pay the costs of such recording and transcription.

(d) A stenographic reporter shall recognize that TRS may print and distribute additional copies of the transcript as necessary to conduct its business and shall maintain the confidentiality of information presented at hearing.

(e) A party who desires the services of a certified language interpreter for any part of the contested case proceedings is responsible for arranging for the interpreter and paying for the services.

§43.38. Dismissal without Hearing.

(a) The administrative law judge [~~hearing officer~~] may consider [~~entertain~~] motions for dismissal from the SOAH docket without a hearing and recommend dismissal with or without prejudice for any of the following reasons:[~~.~~]

(1) failure to prosecute a claim;

(2) unnecessary duplication of proceedings or res judicata;

(3) withdrawal or voluntary dismissal of appeal;

(4) moot questions,[~~or~~] obsolete petitions, or laches;

(5) lack of jurisdiction; or

(6) failure to comply with §43.12 of this chapter [~~title~~] (relating to Form of Petitions and Other Pleadings) or other applicable sections.

(b) The administrative law judge [~~hearing officer~~] shall dismissfrom the SOAH docket and recommend dismissal by TRS of the appeal of a petitioner [~~any person who has filed written notice of the appeal but~~] who has defaulted by:

(1) failing to [~~personally~~] appear at the hearing [~~if the appellant is not represented by any attorney at law unless such appearance is waived by agreement of all the parties~~]; or

[~~(2) failing to personally appear at the hearing if the appellant is represented by an attorney at law unless the appellant gives notice at least 10 days prior to the date of the hearing that the appellant will not personally appear and such appearance is waived by agreement of all parties; or~~]

(2) [~~(3)~~] failing to request a hearing or take some other action specified by the administrative law judge [~~hearing officer~~] within 30 days after notice is mailed of intention to dismiss the claim.

(c) For good cause, the executive director may permit reinstatement of a dismissed appeal.

§43.39. Summary Disposition [~~Judgment~~].

(a) A party may move with or without supporting affidavits for a summary disposition [~~judgement~~] any time after an appeal has been referred to SOAH [~~a petition has been filed~~]. The motion for summary disposition [~~judgement~~] shall specify the grounds for resolving the appeal without an evidentiary hearing [~~for which the judgement should be rendered~~]. The motion and any supporting affidavits shall be filed and served at least 25 [~~15~~] days before the time specified for the hearing [~~which must be arranged with the hearing officer~~]. The motion may be granted [~~judgement sought will be rendered~~] if the pleadings, discovery, affidavits, stipulation of the parties, and authenticated or certified public records submitted in support of the motion[~~on file at the time of the hearing~~]show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition [~~judgment~~] as a matter of law on the issues expressly set out in the motion [~~or in an answer or other response~~].

(b) A proposal for decision by the administrative law judge recommending summary disposition is subject to exceptions in the same manner as a proposal for decision issued after an evidentiary hearing.[~~party adversely affected by a summary judgment decision may appeal the decision to the board of trustees provided written notice of~~

appeal is filed with the executive director within 10 days after the decision is issued. If no such notice of appeal is timely filed, the decision rendered in the summary judgement proceeding shall be the final decision of TRS.]

§43.40. The Record.

The record in a contested case shall include the items identified in Government Code, §2001.060.[:]

[(1) all pleadings, motions, and intermediate rulings;]

[(2) evidence received or considered;]

[(3) a statement of matters officially noticed;]

[(4) rulings and objections made on questions and offers of proof;]

[(5) proposed findings, exceptions, and briefs;]

[(6) any decision, opinion, or report by the officer presiding at the hearing;]

[(7) all staff memoranda or data submitted to or considered by the hearing examiner or trustees of TRS who are involved in making the decision; and]

[(8) summaries of the results of any prehearing conferences held in connection with the case.]

§43.41. Findings of Fact.

Findings of fact shall be based exclusively on the evidence admitted in accordance with applicable rules and statutes and on matters officially noticed.

§43.42. Reopening of Hearing.

Upon motion of any party or upon the order of the administrative law judge [motion of the hearing officer,] the hearing may be reopened for good cause at any time before the proposal for decision is issued [a decision is rendered]. After issuance of a proposal for decision, the executive director (for decisions pending before the executive director) or board may order the hearing reopened for good cause at any time before a decision is made. If the hearing is ordered to be reopened, the executive director or the board, as applicable, shall remand the matter to SOAH for additional hearing and recommendation.

§43.43. Subpoenas and Commissions.

(a) The issuance of a subpoena [subpoenas] in any proceeding shall be governed by the Administrative Procedure [and Texas Register] Act, [(Texas]Government Code, §2001.089. Upon a written request by a party showing good cause and payment of required fees, or upon the request [motion] of the executive director, board of trustees, or administrative law judge [presiding hearing officer], TRS may issue a subpoena [subpoenas] addressed to the sheriff or a constable to require the [that] attendance of witnesses or [and] the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a hearing.

(b) The issuance of a commission in any proceeding shall be governed by the Administrative Procedure Act, Government Code, §2001.094. Upon a written motion of a party and payment of required fees, or on the request of the administrative law judge, the executive director, or the board of trustees, TRS may issue a commission addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken. [Motions for subpoenas to compel the production of books, papers, accounts, or documents shall be addressed to TRS, shall be verified, and shall state as specifically as possible the books, papers, accounts, or documents desired and the material and relevant facts to be proved by them. If the matter sought is relevant, material, and necessary and will not result in harassment, imposition, or undue inconvenience or expense to the party to be required to produce the same, the executive secretary or the hearing officer may issue a subpoena compelling the production of books, papers, accounts, or documents as deemed necessary.]

(c) Subpoenas and commissions shall be issued by the executive director only after a [showing of good cause and] deposit of sums sufficient to ensure [insure] payment of expenses incident to the subpoenas. Payment [Service of subpoenas and payment] of witness fees shall be made in the manner prescribed in the Administrative Procedure [and Texas Register] Act, Government Code, §2001.103.

§43.44. Discovery[, Entry on Property; Use of Reports and Statements].

[(a)] Parties may obtain discovery under 1 TAC §155.31. [Upon motion of any party and upon notice to all other parties, and subject to such limitations of the kind provided for discovery under the Rules of Civil Procedure, TRS may order any party:]

[(1) to produce and permit the inspection and copying or photographing by or on behalf of the moving party any of the following which are in his possession, custody, or control: any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain, or are reasonably calculated to lead to the discovery of, evidence material to any matter involved in the action; and]

[(2) to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon which may be material to any matter involved in the action.]

[(b) The order shall specify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe such terms and conditions as are just.]

[(c) The identity and location of any potential party or witness may be obtained from any communication or other paper in the possession, custody, or control of a party, and any party may be required to produce and permit the inspection and copying of the reports, including factual observations and opinions, of an expert who will be called as a witness. Provided, that the rights therein granted shall not extend to other written statements of witnesses or other written communications passing between agents or representatives or the employees of any party to the suit or to other communications between any party and his agents, representatives, or other employees, where made subsequent to the occurrence or transaction upon which the suit is based, and made in connection with the prosecution, investigation, or defense of such claim or the circumstances out of which same has arisen.]

[(d) Any person, whether or not a party, shall be entitled to obtain, upon request, a copy of any statement he has previously made concerning the action or its subject matter and which is in the possession, custody, or control of any party. If the request is refused, the person may move for an agency order under this section. For the purpose of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.]

§43.45. Proposals for Decision, Exceptions, [Final Decisions] and Appeals to the Board of Trustees.

(a) The [hearing officer or] administrative law judge shall issue a proposal for decision withproposed conclusions of law and findings

of fact [~~and/or a proposal for decision~~] in accordance with Government Code,Chapter 2001[~~, of the Government Code~~] and 1 TAC §155.59.

(b) Exceptions to the proposal for decision [~~SOAH's proposed final decision~~] shall be filed with TRS, directed to the attention of the executive director, within 15 days of the date the proposal for [~~proposed final~~] decision was issued. Replies to any exception shall be filed with TRS within 15 days of the date the exception is filed. Exceptions shall state with specificity any error of fact or law alleged to have been made by the administrative law judge, [~~hearing officer~~] and specific references shall be given to exhibit numbers and pages and to [~~exhibits or~~] testimony where supporting evidence is found. References to testimony shall include the witness name and transcript page and line, if a transcript was prepared; if no transcript was prepared, testimony shall be identified at least by witness name, as well as any other means that may assist in verifying assertions regarding the testimony.

(c) The executive director shall [~~then~~] render a decision in the proceeding, except that in a proceeding relating to eligibility for disability retirement, the board of trustees shall render a decision following issuance of a proposal for decision[~~each case~~]. The executive director or the board of trustees may accept or modify the proposedconclusions of law or proposed[~~,~~]findings of fact or may vacate or modify an order issued by an administrative law judge in the manner set forth in subsection (f) of this section.[~~, and/or proposal for decision under the circumstances set out in Section 2001.058 of theGovernment Code or a fiduciary responsibility as a trustee of the TRS Trust established in the Texas Constitution.~~] If changes are made, the decision[~~executive director~~] shall state in writing the specific reason and legal basis for each change. A copy of the decision shall be served on the parties [~~by the executive director~~].

(d) Any party adversely affected by a decision of the executive director in a docketed appeal[~~, other than the Teacher Retirement System of Texas (TRS),~~] may appeal the decision to the board of trustees, unless by statute or other rule the decision of the executive director is the final decision of TRS. Written[~~provided that a written~~] notice of appeal must be [~~is~~] filed with the executive director no later than[~~within~~] 20 days after the decision of the executive director is served. [~~If no such notice of appeal is timely filed, the decision of the executive director shall be the decision of TRS.~~] If notice of appeal is timely filed, the decision of the executive director shall serve as a proposal for decision to [~~for a hearing before~~] the board.

(e) If a decision of the executive director is appealed, the parties may file additional exceptions or briefs and replies if the executive director modified the administrative law judge's [~~hearing officer's proposal or the~~] proposed findings of fact or conclusions of law. Additional exceptions or briefs must be filed and served at the same time as the notice of appeal. Replies shall be filed and served within 15 days of the filing of the notice of appeal and exceptions or briefs. The executive director may modify the filing deadlines.

(f) The final decision [~~by the board of trustees~~] in an appeal shall be based upon the existing record in the case. The board of trustees or the executive director, as applicable,may change a proposed finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge,[~~the proposal for decision~~] only, if the board or executive director determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided to the administrative law judge, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed; or

(4) that the change is pursuant to [~~needed based on~~] a fiduciary responsibility [~~as a trustee of the TRS Trust established in the Texas Constitution~~].

(g) An administrative decision of TRS staff, a decision by the Medical Board, or a decision by the executive director is the final decision of TRS unless a party exhausts any right to appeal a matter to the board of trustees.

§43.46. Rehearings.

(a) A decision of the executive director is the final decision of TRS when, under applicable law or rule, the decision is not subject to appeal to the board and when the circumstances described in Government Code, §2001.144, are met.

(b) A decision by the board of trustees in a contested case is the final decision of TRS when the circumstances described in Government Code, §2001.144, are met.

(c) [~~(a)~~] A party adversely affected by a [~~final~~] decision that may be the final decision of TRS may [~~in a case must~~] file a motion for rehearing with TRS, not later than the 20th day after the date on which the party or party's attorney of record is notified of the decision or order that may become final under Government Code, §2001.144. A party or attorney of record notified by mail is presumed to have been notified on the third day after the date on which the notice is mailed. Any motion for rehearing shall be directed to the attention of the executive director and served on all parties. A timely motion for rehearing is a prerequisite to an appeal in a contested case under Government Code, §2001.145, if an appeal is otherwise permitted by law[~~by the executive director or the decision or order of the board of trustees when an appeal to the board is made~~].

(d) [~~(b)~~] A reply to the motion for rehearing must be filed with TRS not later than the 30th day after the date on which the party or party's attorney of record is notified of [~~as required by Chapter 2001 of the Government Code concerning~~] the decision or order that may become final under Government Code, §2001.144.

(e) [~~(c)~~] The board of trustees, or the executive director if the motion for rehearing concerns a decision of the executive director that may not be appealed to the board, [~~executive director~~] shall act on a motion for rehearing not later than the 45th day after the date on which the party or party's attorney of record is notified of[~~as required by Chapter 2001 of the Government Code concerning~~] the decision or order that may become final. If the motion is not acted on within the time specified, [~~or~~] the motion is overruled by operation of law.

[~~(d) A party or attorney of record notified by mail is presumed to have been notified on the date on which the notice is mailed.]~~

(f) The board of trustees may rule on a motion for rehearing in the manner provided for in Government Code, §2001.146.

(g) The executive director may by written order extend the time for filing a motion or reply or for TRS to take action on a motion for rehearing, in accordance with Government Code, §2001.146.

§43.47. Procedures Not Otherwise Provided.

If, in connection with any hearing, the executive director or [~~and~~] the administrative law judge determines [~~hearing officer determine~~] that there are no statutes or other applicable rules resolving particular procedural questions in the proceedings, [~~then before the agency, the executive director will direct~~] the parties shall [~~to~~] follow procedures consistent with the purpose of this chapter[~~these sections~~].

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 September 30, 2002.

TRD-200206354
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: December 19, 2002
For further information, please call: (512) 542-6115

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CHAPTER 43. ADJUDICATIVE HEARINGS

34 TAC §§43.30 - 43.32, 43.37

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

The Teacher Retirement System of Texas (TRS) proposes the repeal of §43.30 concerning exceptions; §43.31 concerning oral argument; §43.32 concerning appearance; and §43.37 concerning reporters and transcripts. A proposed new §43.37 concerning recording of the hearing and the use of a certified language interpreter is being simultaneously proposed in this issue of the *Texas Register*.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. These sections and others have been previously reviewed in an open meeting by the TRS Policy Committee. These sections and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The proposed repeal of §§43.30-43.32 and §43.37 are proposed because the reason for originally adopting the sections no longer exist due to the reorganization of the content of these sections into other sections in this chapter or due to the fact that the rules of SOAH adequately address the subject matter of these sections.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the repeals will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the repeals.

Mr. Jung, Deputy Director, has also determined that the public benefit of the repeals will be clarification of applicable contested case procedures, greater coordination with the rules of SOAH as recently amended, and more efficient procedures. He has also determined that there generally will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the repeals as proposed for each year of the first five years the repeals will be in effect

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The repeals are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

No other laws are affected by these proposed changes.

§43.30. Exceptions.
§43.31. Oral Argument.
§43.32. Appearance.
§43.37. Reporters and Transcript.

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 September 30, 2002.

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Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: December 19, 2002
For further information, please call: (512) 542-6115

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CHAPTER 47. QUALIFIED DOMESTIC RELATIONS ORDERS

34 TAC §§47.1, 47.2, 47.4 - 47.10, 47.13, 47.15, 47.17

The Teacher Retirement System of Texas (TRS) proposes amendments to §47.1 concerning payments by TRS; §47.2 concerning submission of orders; §47.4 concerning payment pursuant to qualified orders; §47.5 concerning orders not qualified; §47.6 concerning appeal of notice that order is not qualified; §47.7 concerning submission of order; §47.8 concerning orders affecting optional retirement program; §47.9 concerning orders affecting benefits from more than one public retirement system; §47.10 concerning determination of whether an order is a qualified domestic relations order; §47.13 concerning benefits resulting from resumption of membership and reinstatement of service credit; §47.15 concerning death of an alternate payee; and §47.17 concerning calculation for alternate payee benefits before a member's benefit begins.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. These sections and others have been previously reviewed in an open meeting by the TRS Policy Committee. These sections and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The proposed amendments to §47.1 reflect that a determination that an order is a qualified domestic relations order (QDRO) may be affected if a court withdraws or supersedes the order. The

proposed amendments to §47.6 clarify that a determination that an order is not qualified is a final decision by TRS and delete language that could be interpreted as purporting to authorize an appeal. The proposed amendments to §47.7 clarify that a party to a QDRO is required to submit a certified copy of any amendments to the order for TRS review. The proposed amendments to §47.9 clarify TRS's responsibilities relating to an order affecting benefits payable by both TRS and another public retirement system. The proposed amendments to §47.10 make minor stylistic changes and also include a reference to applicable provisions of the Internal Revenue Code relating to qualified plans and QDROs. The proposed amendments to §47.15 clarify that when an alternate payee begins to receive payments in lieu of benefits awarded under a QDRO under applicable law, upon the death of the alternate payee there is no reversion of the alternate payee's interest to the TRS participant. This is necessary to expressly clarify that because the payment to the alternate payee is the actuarial equivalent of the benefit awarded under the QDRO, a corresponding permanent actuarial reduction to the payment to the participant is required. The proposed amendments to §47.17 clarify and provide greater detail for calculation of alternate payee benefits before a member's benefits begins. The amendments address calculation of payments if the member is participating in the Deferred Retirement Option Plan (DROP), and they also update various benefit options to reflect statutory changes to those options. They add a reference to relevant QDRO provisions of the Internal Revenue Code applicable to qualified plans. The proposed amendments to §§47.2, 47.4, 47.5 and 47.13 reflect minor wording and stylistic changes.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the section as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section.

Mr. Jung, Deputy Director, has also determined that the public benefit will be clarification of procedures relating to qualified domestic relations orders and payments under such orders. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the sections as proposed for each year of the first five years the proposals will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The amendments are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board, as well as under Government Code, Chapter 804, §§804.003 and 804.005 authorizing the adoption of rules relating to qualified domestic relations orders. The amendments also are proposed in conjunction with 26 United States Code §414(p) relating to QDROs and qualified plans.

In addition the following laws are affected by these proposed changes: Government Code §821.005, Government Code §825.506, Government Code §804.101, Government Code §824.402, Government Code §824.404, Government Code §824.803, and Government Code §824.804.

§47.1. Payments by TRS.

The Teacher Retirement System of Texas (TRS) will make payment of retirement or survivor benefits or of refunded contributions only as directed by statute or by a qualified domestic relations order (QDRO). After TRS determines that an order is a QDRO, TRS shall make payments to the alternate payee as directed by the QDRO, unless TRS receives a certified copy of an order from a court of competent jurisdiction that withdraws or supercedes the previous order.

§47.2. Submission of Orders.

A person who wishes to have TRS[~~the Teacher Retirement System of Texas (TRS)~~] review a domestic relations order to determine whether it is a QDRO [~~qualified domestic relations order~~] for the purpose of receiving TRS benefits or payments shall submit a copy of a signed domestic relations order to TRS. The copy shall be certified by the clerk of the court that entered the order. TRS shall not make a determination for orders not yet entered by the court.

§47.4. Payment Pursuant to Qualified Orders.

If the order is determined to be a QDRO [~~qualified domestic relations order~~], TRS shall, subject to the limitations of this chapter, pay benefits in accordance with the order at the time of distribution of benefits or withdrawn contributions to a member. Any determination that an order is a QDRO [~~qualified domestic relations order~~] is voidable or subject to modification if TRS determines that the provisions of the order have been changed or that circumstances relevant to the determination have changed.

§47.5. Orders Not Qualified.

The executive director or the executive director's designee shall provide a written notice of any determination that an order is not a QDRO [~~qualified domestic relations order~~]. The notice shall identify the provisions of the order that do not meet the requirements of applicable statutes or rules and shall explain how the provisions do not meet applicable requirements.

§47.6. Determination [~~Appeal of Notice~~] That AnOrder Is Not Qualified Is Final

A determination by the executive director or the executive director's designee that an order is not a QDRO is a final decision by TRS [~~qualified domestic relations order may be appealed directly to a district court of Travis County~~]. No appeal to the board of trustees of TRS[~~the Teacher Retirement System of Texas~~] is authorized[~~required prior to the appeal to a district court~~]. However, a party adversely affected by a determination of the executive director or the designee must file a motion for reconsideration with the executive director no later than 20 days after the date such determination is rendered if the party wishes to contest the determination [~~as a prerequisite to an appeal to a district court~~].

§47.7. Submission of Amended Order.

If a court amends an order that TRS has determined to be a QDRO[~~so that it may be a qualified domestic relations order~~], the member or retiree or alternate payee shall [~~should~~] submit a certified copy of the amended order to TRS. TRS shall review any amended order that it receives according to the same rules applicable to all other orders.

§47.8. Orders Affecting Optional Retirement Program.

A member or retiree or any [~~an~~] alternate payee should submit an order affecting benefits payable under the Optional Retirement Program (ORP) to the applicable carrier and not to TRS, unless the order also affects benefits payable by TRS, in which case a copy of the order should be submitted both to the applicable carrier and to TRS.

§47.9. Orders Affecting Benefits from More Than One Public Retirement System.

[~~If an order affects benefits payable under more than one public retirement system, the member or retiree or any alternate payee should submit the order to each public retirement system for review. Each system's determination of whether the order is a qualified domestic relations order shall affect only benefits payable by that system.~~] If TRS

receives [~~determines that~~] an order that affects benefits payable under TRS and another public retirement system, TRS shall determine if the order is a QDRO only with regard to the benefits payable by TRS [~~is a qualified domestic relations order, but another system determines that an order is not a qualified domestic relations order and the order is subsequently modified by a court, the amended order should be submitted to TRS for review~~].

§47.10. Determination of Whether an Order Is a Qualified Domestic Relations Order.

TRS shall apply the statutory criteria to determine whether an order is a QDRO [~~qualified domestic relations order~~]. The following provisions shall also be used in making the determination.

(1) The order must provide for each possible distribution by the retirement system for the member or retiree. This requirement may be met by a provision that:

(A) awards a specified or clearly determinable percentage, rather than an amount, of each distribution by TRS based on the participant's account; or

(B) awards all benefits not specified to the participant to be paid in accordance with plan provisions.

(2) The order must provide for reducing the amount awarded in the event of reduction of the benefit based on the age of the participant, each reduction to be in proportion to the factors used to reduce the standard annuity on the basis of the participant's age below normal retirement age. This requirement shall not apply if:

(A) the order awards a percentage of whatever monthly benefit is payable after all elections have been made by the member, or in the event of death benefits, by the designated beneficiary;

(B) the member or retiree has reached normal retirement age and, if a retiree, has retired without any reduction for early age retirement at the time of the determination as to whether the order is a QDRO [~~qualified domestic relations order~~]; or

(C) the order reflects that the retiree is, or will be receiving, retirement benefits reduced for early age retirement and the award to the alternate payee has considered the reduced amount of the retiree's annuity payments.

(3) The order may not:

(A) purport to require the designation by the participant of a particular person as the recipient of benefits in the event of a member's or annuitant's death;

(B) purport to require the selection of a particular payment plan or benefit option;

(C) require any action on the part of the retirement system contrary to its governing statutes or plan provisions other than the direct payment of the benefit awarded to an alternate payee; or

(D) award any interest in distributions by the retirement system contingent on any condition other than those conditions resulting in the liability of the retirement system for payment under its plan provision.

(4) A QDRO [~~qualified domestic relations order~~] may not provide for the award of a specific amount of a benefit, rather than a percentage of this benefit, to an alternate payee unless the order also provides for a reduction of the amount awarded in the event that the benefits available to the retiree or member are reduced by law. This requirement shall not apply to benefit waivers executed by the participant.

(5) If the order intends to award the participant the full amount of any future benefit increases that are provided or required by the legislature, the order must explicitly state such. TRS, its board of trustees, and its officers and employees shall not be liable for making payment of part of any future benefit increases to any person if the order so requires or if the order awards a percentage of benefits payable and does not explicitly state that future benefit increases are awarded solely and completely to the plan participant.

(6) An order that purports to give to someone other than a member the right to designate a beneficiary or choose any retirement plan available from TRS is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a QDRO [~~qualified domestic relations order~~].

(7) An order that attaches a lien to any part of amounts payable with respect to a member or retiree is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a qualified domestic relations order.

(8) An order that awards an alternate payee a portion of the benefits payable with respect to a member or retiree under TRS and that purports to require TRS to make a lump sum payment of the awarded portion of the benefits to the alternate payee that are not payable in a lump sum is one that requires action contrary to TRS' governing statute and plan provisions and therefore is not a QDRO [~~qualified domestic relations order~~].

(9) An order shall specify the date of the marriage.

(10) An order that allocates the participant's investment in contract in a manner not in compliance with any requirements of the Internal Revenue Code and applicable regulations is not a QDRO [~~qualified domestic relations order~~]. An order that does not allocate a participant's investment in contract may be determined to be a QDRO[~~qualified domestic relations order~~] if it provides sufficient information for TRS to make the allocation in accordance with applicable laws and regulations.

(11) An order that purports to require a member to terminate employment, to withdraw contributions, or to apply for retirement, is not a QDRO [~~qualified domestic relations order~~].

(12) The order must satisfy the requirements of Internal Revenue Code §414 (p)(1)(A)(i) and 414(p)(1)(B).

§47.13. Benefits Resulting from Resumption of Membership and Reinstatement of Service Credit.

If a member terminates membership in TRS by withdrawal of contributions, TRS shall pay all or a portion of the amount withdrawn to any alternate payee as directed by a QDRO [~~qualified domestic relations order~~]. If the former member later resumes membership in TRS, then TRS shall pay to an alternate payee no portion of any benefits payable to the member or retiree which result from the resumption of membership, even if those benefits result in part from reinstatement of service credit initially credited during the marriage.

§47.15. Death of an Alternate Payee.

The death of an alternate payee shall terminate the interest of that payee in TRS. Upon proof of death of the alternate payee, the member, retiree, or beneficiary shall be entitled to receive the full amount of payments payable in the future to the member, retiree, or beneficiary without reduction for the amount previously being paid to the alternate payee under the QDRO. However, when an alternate payee is receiving benefits under §804.005, in lieu of benefits awarded in the QDRO, there is no reversion of the alternate payee's benefit to the member upon the alternate payee's death, regardless of whether the death occurs before or after the member's benefit commencement. This section does

not affect the manner of payment of benefits to the member, retiree, or beneficiary.

§47.17. Calculation for Alternate Payee Benefits Before a Member's Benefit Begins.

(a) A "qualified domestic relations order" (QDRO) means a domestic relations order which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a member or retiree under a public retirement system, which directs the public retirement system to disburse benefits to an alternate payee, and which meets the requirements of [~~the Texas~~] Government Code, §804.003and Internal Revenue Code §§4(p)(1)(A)(i) and 414(p)(1)(B).

(b) The retirement system shall pay any eligible [~~qualified~~] alternate payee who has a QDRO [~~qualified domestic relations order~~] approved by the retirement system and who elects such payments, an amount that is the alternate payee's portion of the actuarial equivalent of the accrued benefit of the member of the retirement system, determined as if the member retired on the date of the alternate payee's election. The amount will become payable, upon receipt of a written request and a certified copy of a domestic relations order determined to be qualified, in accordance with the order, and in the form of an annuity payable in equal monthly installments for the life of the alternate payee.

(c) This method of distribution may be elected only when there is a member whose benefits are subject to partial payment under the law, who has not retired; who has attained the greater of either the age of 62 and is eligible to retire without reduction for early age retirement, or [~~has attained~~] normal retirement age and service requirements for service retirement; and who retains credit and contributions in the retirement system attributable to that service.

(d) If an alternate payee elects to be paid under this section, the retirement system shall reduce the benefit payable by the system to the member or the member's beneficiary by the alternate payee's portion of the actuarial equivalent determined under this section.

(e) In figuring these benefits for the alternate payee and the adjusted standard annuity of the member's benefit as set forth in this section, the system shall consider the member's benefit as a normal age standard service retirement annuity, without regard to any optional annuity chosen or beneficiary designated by the member.

(f) The beginning of monthly payments under this section terminates any interest that the alternate payee who receives the payment might otherwise have in benefits that accrue to the account of the member after the date the initial payment to the alternate payee is made.

(g) An alternate payee who elects this method of payment has only a right to receive an annuity for life as calculated in this section and does not have the right to pass on any portion of his/her benefit upon his/her death. There is no reversion of the alternate payee's benefit to the member upon the alternate payee's death, irrespective of whether the death occurs before or after the member's benefit commencement.

(h) TRS will use Tables for Life Annuity Factors, Interest Annuity Factors, and Interest Accumulation Factors furnished by the TRS actuary of record.
Figure 1: 34 TAC §47.17(h) (No change.)
Figure 2: 34 TAC §47.17(h) (No change.)
Figure 3: 34 TAC §47.17(h) (No change.)

(i) To calculate the alternate payee's actuarial equivalent benefit, the following procedure will be followed:

(1) Determine the member's accrued monthly benefit as of the alternate payee's benefit commencement date.

(2) Determine the member's age and the alternate payee's age as of the alternate payee's benefit commencement date.

(3) Determine the appropriate percent of the member's accrued benefit payable to the alternate payee under the terms of theQDRO[~~qualified domestic relations order~~].

(4) Calculate the alternate payee's actuarial equivalent monthly benefit by multiplying the member's accrued benefit times the life annuity factor at member's age times the alternate payee's percent. Then, divide that figure by the life annuity factor at alternate payee's age.

(j) To calculate the member's adjusted standard annuity, there are two scenarios:

(1) the alternate payee elects a monthly income and survives until the member annuity commencement date (MACD); or

(2) the alternate payee elects monthly income and dies before the member annuity commencement date (MACD).

(k) When the alternate payee elects under subsection (j)(1) of this section, the formula used to reduce the member's standard annuity is the member's standard annuity monthly benefit amount minus the figure derived by dividing the total reserve for benefits to the alternate payee by the life annuity factor of the member at the member's age at MACD. The total reserve for the benefits to the alternate payee is the reserve for payments made to the alternate payee prior to MACD plus the reserve for payments made to the alternate payee after MACD. The reserve for payments made to the alternate payee after MACD is the alternate payee monthly benefit amount times the life annuity factor of the alternate payee at the alternate payee age at MACD. The reserve for payments made to the alternate payee prior to MACD is the alternate payee monthly benefit amount times the interest annuity factor to reflect payments of the number of payments before MACD.

(l) When the alternate payee elects under subsection (j)(2) of this section, the formula used to reduce the member's standard annuity monthly benefit amount is the member's standard annuity monthly benefit amount before the reflection of payments to the alternate payee under this section minus the figure derived by dividing the total reserve for payments made to the alternate payee by the life annuity factors of the member at the member's age at MACD. The total reserve for payments made to the alternate payee is the alternate payee monthly benefit amount times the interest annuity factor to reflect payment of the number of payments before death times the interest accumulation factor to reflect interest of the number of full months from the date of death of the alternate payee to the MACD.

(m) If the member dies before MACD and a standard annuity is used to calculate any benefit due after death, benefits payable on behalf of the member must be based on the member's adjusted standard annuity. The balance of the accumulated contributions in the member savings account payable to a beneficiary must also be adjusted to reflect the payment to the alternate payee by reducing the accumulated contributions in the member savings account by the QDRO percentage described in subsection (i)(3) of this section. A[~~An Option 1, 2, or 5~~]benefitof an amount equal to twice the member's annual compensation for the school year immediately preceding the school year in which the member dies, or twice the member's rate of annual compensation for the school year in which the member dies, payable under Government Code, §824.402 (a) (1) and (2), or a lump sum payment of $2,500.00 plus an applicable monthly benefit as described in Government Code, §824.404, [~~while using the adjusted standard annuity in the calculation,~~]is not reduced by payments made to the alternate payee under Government Code, §804.005[~~any further due to this rule~~].

(n) If the member dies after MACD, the $10,000.00 lump sum[~~death and~~]survivor benefits or the $2,500.00 lump sum payment plus an applicable monthly benefit [~~benefits~~] payable to a beneficiary under Government Code, §§824.501 and 824.404, are not reduced as a result of payments to an alternate payee under this rule. Any payments paid pursuant to Government Code, §824.407 must be reduced by first reducing the account balance at the time of retirement by the QDRO percentage described in subsection (i)(3) of this section.

(o) If the member elects to terminate membership in TRS before MACD, the member contributions in the member account before a refund is processed, must be reduced by the QDRO percentage described in subsection (i)(3) of this section.

(p) When new law provides for an increase in the benefit payable to the member after the commencement of the payment of an annuity to the member, the increase will be distributed by increasing the member's and the alternate payee's benefit as provided by the law for an increase to the member's benefit so long as there is no additional actuarial cost to the system unless provided otherwise by the legislature [~~Legislature~~].

(q) A person, who has previously withdrawn service that was reduced by a QDRO percentage as described in subsection (o) of this section and who wishes to reinstate the service, must deposit the amount withdrawn or refunded and the fees required by law. Benefits payable based even in part on the terminated service will be reduced as described in this section as if the service had not been terminated.

(r) When a member who has an alternate payee drawing benefits enters a Deferred Retirement Option Plan (DROP), TRS [~~the retirement system~~] will use the adjusted standard annuity in the calculation for the member's DROP.

(s) When a member who is participating in DROP has an alternate payee to begin a distribution under the Government Code, §804.005, the retirement system will use the adjusted standard annuity to calculate all future DROP transfers beginning with the initial month that a distribution is payable to the alternate payee.

(t) When a member who has an alternate payee drawing benefits elects a partial lump-sum option, TRS [~~the retirement system~~] will use the adjusted standard annuity in the calculation for the member's partial lump-sum payment.

(u) In the event the total distribution amount awarded to the alternate payee in a QDRO is limited to a specific dollar amount, the following procedure will be followed to calculate the alternate payee's actuarial equivalent benefit:

(1) Determine the alternate payee's age as of the alternate payee's benefit commencement date.

(2) Calculate the alternate payee's actuarial equivalent monthly benefit by dividing the total distribution amount, as limited, awarded to the alternate payee by the life annuity factor at alternate payee's age.

(v) In the event the alternate payee dies prior to receiving the total limited distribution awarded to the alternate payee in a QDRO and before the MACD, calculate the member's adjusted standard annuity as described in subsection(j)(2) of this section.

(w) When a member who is participating in DROP has an alternate payee to begin a distribution under the Government Code,§804.005, TRS will calculate the alternate payee's actuarial equivalent benefit by multiplying the member's accrued benefit times the life annuity factor at member's age plus the balance of the DROP times the alternate payee's percent. That figure shall then be divided by the life annuity factor at alternate payee's age.

(x) When a member who is participating in DROP has an alternate payee to begin a distribution under the Government Code, §804.005, TRS will reduce the DROP account by applying the percentage of the member's accrued benefit payable to the alternate payee under the terms of the qualified domestic relations order beginning with the initial month that a distribution is payable to the alternate payee.

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 September 30, 2002.

TRD-200206355
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: December 19, 2002
For further information, please call: (512) 542-6115

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CHAPTER 49. COLLECTION OF DELINQUENT OBLIGATIONS DEBTS

34 TAC §§49.1 - 49.7

The Teacher Retirement System of Texas (TRS) proposes amendments to the title of Chapter 49 currently designated as Collection of Debts and to §49.1 concerning administrative procedures; §49.2 concerning demand letters; §49.3 concerning referral of matters to the Attorney General for collection; §49.4 concerning extension of deadlines, §49.5 concerning records, §49.6 concerning supplemental and alternative collection procedures, and §49.7 concerning exceptions.

This proposal is part of the review process by TRS of all the Rules in compliance with the Government Code §2001.039 and Senate Bill 178, §1.11(c) of Acts 1999, 76th Legislature, Chapter 1499. This is the second comprehensive review of TRS rules and it is being conducted within the four-year period following the initial comprehensive review. The review process will include, as a minimum, an assessment by TRS as to whether the reasons for adopting or readopting the rules continue to exist. These sections and others have been previously reviewed in an open meeting by the TRS Policy Committee. These sections and others are being posted for comments regarding whether the reasons for adopting the rules continue to exist.

The proposed amendments to §49.1 reflect minor re-wording of the title and contents for clarification. The proposed amendments to §49.2 update the contents to more accurately reflect TRS procedures for demand letters and to reflect revised rules of the Attorney General (1 TAC §59.2) relating to collections, including provisions permitting departmental staff to determine and document that a delinquent obligation is uncollectible. The proposed amendments to §49.3 clarify the procedures that will be used to determine whether a delinquent obligation should be referred to the Attorney General's office. The proposed amendments to §§49.4 and 49.5 reflect minor wording and stylistic changes. The proposed amendments to §49.6 reflect minor wording changes as well as deletion of references to filing of liens as an alternative debt collection procedure, since it is unnecessary to list specific alternatives such as this and since this alternative is not generally used for collections subject to

this chapter. The proposed amendments to §49.7 clarify that the chapter is not applicable to voluntary payments to TRS, such as for certain service credit purchases made by members.

Ronnie Jung, Deputy Director, has determined that for each year of the first five years the sections as amended will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections.

Mr. Jung, Deputy Director, has also determined that the public benefit will be clarification of procedures that may be used by TRS to collect delinquent obligations. He has also determined that there will be no anticipated economic cost to the public, small businesses, or to the persons who are required to comply with the sections as proposed for each year of the first five years the proposals will be in effect.

Comments may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

The amendments are proposed under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board. In addition, Government Code §2107.002 requires agencies to adopt rules for collection of delinquent obligations.

No other laws are affected by these proposed changes.

§49.1. Collection[~~Administrative~~] Procedures.

The executive director or his designee shall develop and maintain procedures for determining whether an [~~a delinquent~~] obligation [~~is~~] owed to TRS is delinquent and for collecting a delinquent obligation[~~or whether a liability should be established by legal or other appropriate procedures~~].

§49.2. Demand Letters.

(a) A [~~The~~] department that has determined a delinquent obligation is owed to TRS [~~responsible under the procedures for making such determinations~~] shall send [~~cause~~] a first demand letter to the obligor, generally [~~be sent~~] no later than 30 days after such determination is made. If no satisfactory response is received within 30 days after the date of the first letter, the department shall send [~~refer the matter to the legal department which shall cause~~] a second demand letter to the obligor, generally no sooner than 30 days but [~~be sent~~] not more [~~later~~] than 60 days after the date of the first demand letter.

(b) Demand letters should be mailed in envelopes that contain the statement "address service [~~correction~~] requested" and shall comply with the applicable requirements for address verification in 39 Code of Federal Regulations Chapter III, Subchapter A, Part 3001, Subpart C, Appendix A, §911 [~~§265.6~~]. Second demand letters shall state, where practical and in accordance with TRS procedures [~~applicable~~], that the delinquent obligation may [~~will~~] be referred to the attorney general if it is not resolved in manner satisfactory to TRS.

(c) If the department does not receive a satisfactory response after sending two demand letters, the department shall determine whether the obligation is uncollectible as a practical matter, based on established procedures. The department shall adequately document a determination that a delinquent obligation is uncollectible.

§49.3. Referrals of Delinquent Obligations [~~Matters~~] to Attorney General for Collection.

(a) If a department determines that a delinquent obligation may be collectible or if TRS procedures otherwise require, the department shall refer the obligation to the Legal Services Department for recommendation of whether TRS should refer the obligation to the attorney general for collection.

(b) [~~(a)~~] The executive director or his designee shall decide whether to refer a matter to the attorney general for collection. This decision and any referral to the attorney general should [~~generally~~] be made [~~and any referral made~~] no later than 120 [~~60~~] days after the determination that an obligation owed to TRS is delinquent [~~second demand letter is sent~~].

(c) [~~(b)~~] Except as noted in this chapter, [~~Generally~~] TRS will not refer for collection delinquent obligations [~~matters~~]in which the amount to be recovered would be less than the total sum of expense to TRS [~~the agency~~] and the attorney general for travel, employee time, court costs, and other relevant expenses. [~~The executive director or his designee may from time to time establish a minimum dollar amount for claims to be referred for collection.~~]

(d) [~~(c)~~] The executive director or his designee may for policy reasons, actuarial reasons, or other good cause [~~determine that a matter should be referred~~] refer a delinquent obligationto the attorney general for collectioneven if the size of the obligation or other considerations generally would cause TRS not to refer the obligation [~~the amount to be recovered does not exceed the minimum established pursuant to this rule~~].

(e) [~~(d)~~] In making a determination of whether to refer a delinquent obligation [~~matter~~] to the attorney general, the executive director or his designee shall consider:

(1) expense of further collection procedures;

(2) the size of the delinquent obligation [~~debt~~];

(3) the existence of any security;

(4) the possibility of collection or satisfaction of the delinquent obligation [~~debt~~] through other means;

(5) the likelihood of collection; and

(6) any other relevant factors established by TRS collections [~~the executive director in his~~] procedures.

(f) [~~(e)~~] When [~~Before~~] referring a delinquent obligation [~~matter~~] to the attorney general, TRS [~~the executive director or his designee~~] shall provide:

(1) [~~verify~~] the obligor's verified [~~debtor's~~] address and telephone number;

(2) a statement [~~conclude~~] that the obligation is not uncollectible; [~~and~~]

(3) proof of [~~transmit~~] no more than two demand letters to the obligor[~~debtor~~]at the obligor's [~~debtor's~~] verified address; and[~~.~~]

(4) other relevant information relating to the delinquent obligations and TRS's collection efforts.

§49.4. Extension of Deadlines.

(a) If an [~~Where~~] address correction [~~corrections~~]is received [~~are provided by the United States Postal Service~~], TRS shall re-send a demand [~~send the~~] letter to the correct address, and the deadlines provided in this chapter shall be tolled accordingly.

(b) Where determinations of obligations or indebtedness are subject to administrative appeal procedures, the deadlines provided in this chapter shall be tolled during the pendency of an appeal [~~such procedures~~].

§49.5. Records.

TRS [~~The executive director~~] shall keep [~~cause~~] records [~~to be kept~~] identifying all persons or entities liable for delinquent obligations and the correct physical address of the obligor's[~~debtor's~~] business and/or residence, if available. Such records should also contain collection histories on each obligor [~~debtor~~] showing, where applicable, attempted contacts with the obligor [~~debtor~~]; efforts to locate the obligor [~~debtor~~]; efforts to locate the assets of the obligor [~~debtor~~] and the results of such efforts; state warrants that may be issued to the obligor [~~debtor~~]; security interests that TRS has against any assets of the obligor [~~debtor~~]; and any other information considered by TRS to be relevant.

§49.6. Supplemental and Alternative Collection Procedures.

At the time collection attempts are being made, TRS may [~~personnel should~~] consider supplemental or alternative debt collection procedures, including warrant hold procedures authorized by [~~the Texas~~] Government Code, §403.055[~~, and the filing of liens. Except as otherwise provided in TRS policy, no lien securing the indebtedness or warrant hold should be released without the approval of the attorney representing the agency~~].

§49.7. Exceptions.

(a) The following [~~Certain~~] obligations to TRS shall be exempt from the procedures [~~provided~~] in this chapter [~~rule except as provided by the executive director. These obligations are~~]:

(1) obligations arising from the investments of the system, which shall be governed by the TRS investment policy and procedures;

(2) state contributions;

(3) other obligations for which a statute provides alternative collection procedures, including but not limited to [~~such as~~]:

(A) employer reimbursement or assumption of state contributions;

(B) unpaid member contributions;

[~~(C) installment payments for special service credit; and~~]

(C) [~~(D)~~] overpayments that [~~which~~] TRS concludes may appropriately be recovered by actuarial adjustments to benefits;

(4) collections made by third parties pursuant to legally authorized contracts.

(b) Voluntary payments made to TRS, including installment payments for special service credit or reinstated service credit, are not obligations to TRS and may not be considered delinquent obligations. Such payments are not subject to this chapter.

(c) [~~(b)~~] For good cause the executive director or his designee may make exceptions to the procedures in this chapter.

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

Filed with the Office of the Secretary of State on September 30, 2002.

TRD-200206356
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: December 19, 2002
For further information, please call: (512) 542-6115

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PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 301. RULES OF THE TEXAS STATEWIDE EMERGENCY SERVICES RETIREMENT FUND

34 TAC §301.3

The Office of the Fire Fighters' Pension Commissioner (FFPC) proposes an amendment to 34 Texas Administrative Code §301.3(d)(10), concerning the Rules of the Texas Statewide Emergency Services Personnel Retirement Fund.

The amendment is proposed because the FFPC is now withholding income taxes from pension checks.

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

Mr. Sandefer also has determined that for each year of the first five-year period that the amended rule is in effect, the public benefit will be current and updated regulations. There will be no economic impact to small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the amended rule as proposed.

Comments on the proposal may be submitted to Morris Sandefer, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than 30 days from the date that this proposed rule amendment is published in the *Texas Register* .

The amendment is proposed under Texas Civil Statutes, Article 6243e.3, which provide the Office of the Fire Fighters' Pension Commissioner with the authority to promulgate rules necessary for the administration of the pension fund.

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

§301.3. Determination of Costs.

(a) Prior Service.

(1) Prior service includes service performed by every active member of the department who is at least 18 years old. The department does not have to include prior service with other departments or time that the TLFFRA law would deem forfeited. This is a local decision.

(2) A public agency may have up to three years to pay prior service costs without incurring interest charges.

(3) In preparing a cost study, the assumed retirement age and interest rate paid for 10 or 20 year payouts will be set by the board based on the recommendations of the actuary.

(4) Prior service costs may be paid off early without penalty.

(5) Departments do not have to purchase prior service for those members who reenter the department, but were not active at the time the department entered the pension system. If the department decides to purchase prior service on members who were not active at the time the department entered the system, the department must pay the additional service in a lump sum payment. Interest is charged back to the date of the department's entrance into the system if it has been more than three years since the department's entrance in the system. The rate is set by the state board based on recommendations of the actuary.

(6) In preparing cost studies, anyone entering the department before age 18 will have their entry date adjusted to their 18th birthday on the study.

(7) Governing entities are not charged for any non-qualifying years of service by their participants.

(8) Cost studies for departments interested in entering Senate Bill 411 must be revised every 6 months.

(b) Increase/Decrease of Dues Paid.

(1) Since a governing entity has the right to increase the dues it pays on its members, it also has the right to lower dues paid as long as it is not below the minimum set by law. In either case, retirements are figured on the average paid. Changes must be for at least $1.00, (one dollar) and they must be effective the first day of any month.

(2) Departments which need to purchase dues for a member and those dues (contributions) cover a period of three or more years will have interest based on actuarial assumptions added to the amount owed. The payment must be made in a lump-sum amount. If the amount owed is offset by a credit to the department from the termination of active members, the interest may be waived by the commissioner.

(c) Transfer of Funds. Upon a public agency's merging into this retirement fund, it must transfer its local pension fund to the Senate Bill 411 system. These funds will be applied to the public agency's prior service costs and/or the cost of TLFFRA (House Bill 258) retirees and surviving spouses, if any. After the payment of these costs, any balance remaining will be applied, until spent, to the monthly contributions for the members of the former local pension fund of that public agency. The amount applied to the public agency's account consists of cash, investments, and any interest earned as of the date of merger. Monies earned on the transfer after the date of merger, are credited to the Senate Bill 411 fund as a whole.

(d) Vesting.

(1) A member who is not vested in this pension fund, but who has a total of 20 or more creditable years of service, may retire under the TLFFRA fund amount used in the cost study for that department if accrued time was purchased. If the member was on the cost study, the member will be carried as a Senate Bill 411 fund retiree with only TLFFRA service (accrued time); and the public agency will not be charged as it is for TLFFRA fund retirees.

(2) Members terminating on or after January 1, 1998, must have served a total of 59 months 28 days (60 months-five years) to vest. After vesting, each month served from 60 through 120 (five years-ten years) increases a member's pension .4167% a month and for months 120 to 180 (10 years to 15 years) it increases a member's pension .8333% a month. Because a monthly increase of .4167% results in an increase of the pension by more than 5% over 12 months, and a monthly increase of .8333% results in an increase of the pension by less than 10% vesting over 12 months, the computer will adjust and correct the percentage at the end of every 12 months of qualified service to reflect the 5% and 10% increase respectively. Credit is given for portions of months of qualified service.

(3) Retirement benefits vest as outlined in §6, Vesting of Benefits, of TSESRA. A member must have 15 years of creditable service (180 months) in Senate Bill 411 before the Senate Bill 411 portion of the monthly retirement is affected by the 7.0% compounding factor.

(4) A member who was considered to be Active-Retired prior to September 1, 1989, may continue in that status. If an active retiree terminates as an active member, the retiree cannot return to the Active-Retired status at a later date.

(5) The Fire Fighters' Pension Commission cannot pay benefits at a greater rate than specified in TSESRA §3, Retirement Benefits, paragraph (b).

(6) In departments where the contribution rate has changed, if a member terminates service before the end of a month the average is figured on the fraction of the month served.

(7) Retirement forms can be backdated to the member's 55 birthday or termination date, whichever occurs later. The first check will be prorated back to the effective date of retirement, disability, etc.

(8) All payees whose pensions are not effective the first day of the month will have their first checks prorated.

(9) In the event of a pensioner's death (and there are no beneficiaries), if this office is not notified and retirement checks continue to be mailed, and the over-payment is not returned to the Commissioner within 30 days after the Commissioner requests repayment, then the commissioner shall charge the over-payment to the governing entity.

(10) Payees wanting to withhold Federal income taxes must file an Internal Revenue Service Form W-4P (Withholding Certificate for Pension or Annuity Payments) with the office. [~~The commission does not and shall not comply with requests to withhold IRS taxes from pension checks. A letter and postcard are mailed with the first pension check to every payee giving them this information. The payee must sign and return the postcard to the commission office. This card states that the payee requests that no tax be withheld. Failure to return the postcard shall not obligate the Commissioner to withhold IRS taxes.~~]

(11) Pension checks for the month are due at the end of the month. Checks are mailed from the commission office between the 24th and 28th of every month except December when they are mailed to arrive at the payee's residence or bank before Christmas.

(12) All first checks to payees are accompanied by notification that cashing or depositing the first check indicates that the payee is retired and agrees with the pension amount.

(e) Death.

(1) Beneficiaries. It is the responsibility of the member and the local board to update the member's record with the commission. This record should name any beneficiaries for lump-sum death benefits. Lump sum death benefits are paid to the beneficiary(ies) listed on the most recent, original, notarized personnel form (502) or beneficiary change form (503).

(2) Monthly Pension if Decedent Was on Active Status (On-Duty Death). The member is automatically vested with at least 15 years in the fund for on-duty deaths.

(3) Monthly Pension if Decedent Was on Active Status (Off-Duty Death). Dependents are not eligible for a monthly pension for off-duty deaths. Spouses will receive a monthly pension if the member was vested in the system and at least 55 years of age. The monthly pension will be based on two-thirds of the retirement due the member based on six times the average dues paid for qualified service.

(4) Benefits if Decedent Was on Inactive Status. Spouses of terminated-vested members, who die before age 55, are eligible to receive, on the effective date of the member's 55th birthday, a monthly pension that is two-thirds of the monthly pension which would have been due the member.

(5) Monthly Pension if Decedent Was on Disability Status. TSESRA §5(d), Death Benefits, states that if a member dies after retirement, the surviving spouse shall receive two-thirds of the monthly

pension the decedent was receiving at the time of death. This includes spouses of deceased members who were on disability at the time of their death.

(6) Lump sum death benefits are based on months served in the SB 411 system (including buyback and future service months) and the dues amount paid. They are not based on the dollar amount paid for prior service. They are payable as noted in paragraph (1) of this subsection.

(7) Lump-Sum Payment for Off-Duty Death After Service of less than 15 Years. The off-duty lump-sum death payment will consist of all contributions to the fund made on the decedent's behalf. If the deceased member has fewer than 15 creditable years in the Senate Bill 411 fund, enough months are added at the final rate to make 180 months of service. The minimum off-duty lump sum death benefit is $2160.00.

(8) Lump-Sum Payment for Off-Duty Death After 15 Years of service or more. For members having served more than 15 creditable years in the retirement fund, the beneficiaries will receive an off-duty lump-sum payment consisting of the total contribution amount paid during the member's service in this program (buy back rate and future service). Portions of creditable months are prorated and counted.

(9) Lump-Sum Death Benefits for On-Duty Deaths. TSESRA Section 5(b) states that the beneficiary is guaranteed a lump-sum benefit of at least $5,000 for an on-duty death. If the sum contributed by the public agency to the fund on the decedent's behalf is more than $5,000, then the beneficiary receives this greater amount. For an on duty death occurring on or after September 1, 1999, the lump sum death benefit is $60,000.00.

(10) Determination of Beneficiaries.

(A) If a member on active status in the pension system dies before the 502 (Personnel Form) is filled out and notarized, the member's public agency's governing body should submit to the Fire Fighters' Pension Commission office, a notarized letter signed by its chief or department head, and local board and a death certificate. The letter should state the decedent's entrance date and that the member was on active status at the time of death. The letter should also list the member's nearest relatives (spouse, children, parents, siblings, etc.) and if the member had a will. After receiving the above information, the Commissioner shall determine the beneficiaries after receiving the advice of legal counsel.

(B) After determination, the local pension board shall send the Commission the Senate Bill 411 Survivor's Form. The letter shall be considered as proof of the member's participation in the pension system. The commission shall bill the public agency for any contributions owed on the member's time at the next billing.

(C) If the decedent has a Personnel Form 502 on file in the pension office, the beneficiaries are paid as listed on that form or the most recent Beneficiary Change Form 503 on file.

(11) Listing of Beneficiaries on Forms.

(A) Under Senate Bill 411, a member can list anyone (including his/her estate) as a beneficiary for his/her lump-sum death benefit.

(B) A person may list as many people as he/she wants as beneficiaries of this lump-sum benefit, but the benefit will be divided equally between them unless the member designates a proportional division.

(C) The spouse and/or dependents will receive any monthly pension due them even if they are not listed as beneficiaries of the lump-sum death benefit.

(12) Guardianship and Determination of Dependents.

(A) See §301.1 of this title (relating to Definitions) for determination of dependency.

(B) The following forms must be submitted:

(i) Obligations of Guardians.

(ii) Certified copies of Letter of Guardianship of the estates of all children. If no guardian is to be named, an Application for Payments Due Minor Child (form 411-G).

(iii) A copy of the Birth Certificate; or if an adopted child, a copy of the Adoption Decree.

(C) Warrants to dependents who are minor children are written: To the order of _____ (guardian's name) Trustee, for the use and benefit of _____. (child's name)

(D) If the dependent was placed in the system prior to September 1, 1991, the guardian of all dependents, age 19 and older, must provide us with certified documentation of dependency yearly. This may be in the form of a copy of the 1040 or a certified statement from the IRS. The certified statement can be obtained from the IRS by the guardian and is more acceptable than a copy of the income tax return. The agency will notify the guardian when a minor dependent becomes 19 as to the proper procedure to continue pension payments. The guardian must notify us as soon as the dependent is no longer eligible to receive benefits.

(E) If the dependent was placed in the system after September 1, 1991, benefits cease at age 18 unless the agency receives a certification of school attendance, in which case benefits stop at age 19.

(F) Certification of dependency forms are mailed to all guardians yearly in April.

(13) Pensioner with no beneficiaries. A pensioner with no beneficiaries, who dies prior to the 14th day of any month, is not eligible to receive a retirement check for that month.

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 October 7, 2002.

TRD-200206446
Morris E. Sandefer
Commissioner
Office of the Fire Fighters' Pension Commissioner
Earliest possible date of adoption: November 17, 2002
For further information, please call: (512) 936-3372

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 367. CONTINUING EDUCATION

40 TAC §367.1

The Texas Board of Occupational Therapy Examiners, (TBOTE) proposes amendments to §367.1. Continuing Education, to be published in the *Texas Register* for public comment.

The section is being amended to add an optional approval process for continuing education.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of terms used in the OT rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701,305-6900, or through email: augusta.gelfand@mail.capnet.state.tx.us

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 456, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All continuing education must be directly relevant to the profession of occupational therapy. The licensee is solely responsible for keeping accurate documentation of all continuing education requirements.

(b) Continuing education documentation includes, but is not limited to, a final official transcript, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, certificates of completion, and official correspondence from the board approving requesting credits.

(c) The first regular license, which has a duration of less than 2 years, does not have a continuing education requirement.

(d) All licensees, except those addressed in [{]subsection (c) of this section must complete 30 hours of continuing education every two years during the period of time the license is current in order to renew the license. Those renewing a license more than 90 days late must submit proof of continuing education for the renewal.

(1) General information hereafter referred to as Type 1 continuing education is relevant to the profession of occupational therapy. Examples include by are not limited to: supervision, education, documentation, quality improvement, administration, reimbursement and other occupational therapy related subjects. (AOTA's Category 3)

(2) A minimum of 15 hours of continuing education must be in skills relevant to occupational therapy practice with patients or clients hereafter referred to as Type 2. (AOTA's Category 1 or 2)

(A) Type 2 courses teach occupational therapy treatment and intervention with patients or clients.

(B) All continuing education hours may be in Type 2.

(e) Any continuing education submissions may be counted only one time.

(f) Effective January 1, 2003, Type 1 and Type 2 educational activities approved by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved by the board. The board will review its approval process and continuation thereof for educational activities by January 2005 and at least once each five-year period thereafter.

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 October 7, 2002.

TRD-200206445
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: November 17, 2002
For further information, please call: (512) 305-3900

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION AND PLACEMENT

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.29

The Texas Youth Commission has withdrawn from consideration proposed amended §85.29 which appeared in the October 4, 2002 issue of the *Texas Register* (27 TexReg 9291).

Filed with the Office of the Secretary of State on October 3, 2002.

TRD-200206414
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: October 3, 2002
For further information, please call: (512) 424–6301

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 60. VICTIMS' ASSISTANCE DISCRETIONARY GRANTS

SUBCHAPTER D. GRANT BUDGET REQUIREMENTS

1 TAC §60.33

The Office of the Attorney General (OAG) adopts amendments to Texas Administrative Code, Title 1 Administration, Chapter 60 Victims' Assistance Discretionary Grants, Subchapter D Grant Budget Requirements, § 60.33 Professional and Contractual Services, relating to the administration of the crime victims' assistance discretionary grants (VADG). The amendments were proposed in the August 30, 2002 issue of the *Texas Register*, (27 TexReg 8069), and are adopted without changes to the proposed text and will not be republished.

The Texas Code of Criminal Procedure, Article 56.541, authorizes the OAG to use the Compensation to Victims of Crime (CVC) fund for grants or contracts for programs that support crime victim-related services or assistance and to adopt rules necessary for the implementation of the article. Chapter 60 carries out the purpose of the statute by establishing the procedures for application and administration of VADGs or contracts which support crime victim-related services or assistance.

The OAG determined that Subchapter D Grant Budget Requirements, §60.33 Professional and Contractual Services, relating to the provisions for expenditures of funds for professional and contractual services, should be amended to enable grantees greater flexibility to procure professional and contractual services. The adopted amendment allows grantees and entities that contract with the OAG to request a waiver from the OAG to exceed the maximum rate schedule for expenses for professional and contractual services. The new adopted paragraph, §60.33(l)(7), explains the procedure a grantee must follow to request a waiver of the maximum rate allowed. Additionally, the amendment provides that the OAG will approve the request for waiver if the waiver is reasonable and consistent with local market rates for similar services.

No comments were received regarding the proposed amendments.

The amendments to §60.33 are adopted under the Texas Code of Criminal Procedure, Article 56.541, which the OAG interprets as authorizing the OAG to adopt rules reasonable and necessary to implement Chapter 56, and in order to provide funds for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Chapter 56.

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 October 4, 2002.

TRD-200206437
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Effective date: October 24, 2002
Proposal publication date: August 30, 2002
For information regarding this publication, please contact A.G. Younger, Agency Liaison, at (512) 463-2110.

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8069

The Health and Human Services Commission (HHSC) adopts new §355.8069, concerning supplemental payments to certain rural public hospitals, in its Medicaid Reimbursement Rates chapter, without changes to the proposed text as published in the July 26, 2002, issue of the *Texas Register* (27 TexReg 6593) and will not be republished.

Section 355.8069 is justified as it addresses the provision of supplemental payments for inpatient hospital services provided by certain rural public hospitals. These supplemental payments will help maintain access to medically necessary services in rural counties. Section 355.8069 will function by describing the methodology that will be used to determine the amount of supplemental payments to qualifying hospitals.

During the public comment period which included a public hearing on August 2, 2002, comments supporting the proposal were received from a state legislator, the Texas Organization of Rural

and Community Hospitals, the Texas Hospital Association, and several individual hospitals and hospital districts.

The rule is adopted under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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 October 7, 2002.

TRD-200206451
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: October 27, 2002
Proposal publication date: July 26, 2002
For further information, please call: (512) 424-6756

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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 H. ELECTRICAL PLANNING

DIVISION 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES

16 TAC §§25.181 - 25.183

The Public Utility Commission of Texas (commission) adopts amendments to §25.181, relating to the Energy Efficiency Goal, §25.182, relating to Energy Efficiency Grant Program, and §25.183, relating to Reporting and Evaluation of Energy Efficiency Programs with changes to the text as proposed in the June 14, 2002 *Texas Register* (27 TexReg 5045). The amended rules will provide guidance for the implementation of the energy efficiency goal mandated under Public Utility Regulatory Act (PURA) §39.905, and an energy efficiency grant program and reporting requirements regarding energy and demand savings, and concomitant air emission reduction as mandated under the Health and Safety Code, Title 5, Subtitle C, Chapter 386, Subchapter E, Energy Efficiency Grant Program. In particular, the amended rules now include a definition for an affiliate of an energy efficiency service provider and the procedure for determining affiliate status. In addition, the amendments will allow utilities to acquire demand savings in a more cost-effective manner by implementing load factor caps and allowing adjustments in incentive levels in response to market conditions. The amendments will also enhance the overall quality of the energy efficiency program by giving utilities greater control over the quality of contractors and encouraging greater participation by small contractors. Because these amendments will increase the burden on the utilities, the amendments will also allow the utilities to continue to expend 10% of the budget on program administration. The amended rules will take effect for any programs being developed for the 2003 calendar program year.

The commission initiated the rulemaking proceeding on March 20, 2002 under Project Number 25610, *Rulemaking Proceeding to Amend the Rules in Chapter 25, Subchapter H, Division 2, Regarding Energy Efficiency and Customer Owned Resources*. The commission's staff hosted one workshop on April 23, 2002 to elicit input from stakeholders on various aspects of the rulemaking. In addition, staff and parties held informal meetings to resolve issues. At the Open Meeting on May 23, 2002, the commission voted to publish the proposed rule amendments for comments in the June 14, 2002 issue of the *Texas Register*.

Written comments were filed on July 15, 2002. American Council for an Energy Efficient Economy (ACEEE), American Electric Power (AEP), Cardinal Glass Industries (Cardinal), Reliant - d/b/a Centerpoint Energy Houston Electric (Reliant), City of Clifton (Clifton), Entergy Gulf States, Inc. (EGSI), Electric Utility Marketing Managers Organization of Texas (EUMMOT), Energy Conservation Coalition (ECC), Felcor Lodging Trust (Felcor), National Association of Energy Service Companies (NAESCO), Office of Public Utility Council (OPC), Oncor Electric Delivery Company (Oncor), Service Providers Coalition (SPC), Texas Association of Air Conditioning Contractors (TACCA), Texas Hotel & Motel Association (THMA), and Texas Ratepayers Organization to Save Energy, Texas Legal Services Center and Consumers Union, collectively referred to as Consumer Groups, filed written comments. Felcor's comments consisted of a letter expressing support of the comments filed by the THMA.

On July 18, 2002, commission staff held a public hearing pursuant to §2000.029 of the Administrative Procedures Act (APA). The purpose for the hearing was to give parties the opportunity to provide additional, clarifying, or reply comments. Representatives of AEP, Aspen Systems, Cardinal, Clark, Thomas & Winters, Consumer Groups, ECC, EUMMOT, Free Lighting Company, Frontier Associates (Frontier), Good Company, Nexant Consulting, OPC, Oncor, Princeton American Energy, LLC, Reliant, SESCO, Inc., TACCA, and Winegard Energy attended the public hearing. EUMMOT represented AEP, EGSI, Oncor, Reliant, and Texas New Mexico Power Company (TNMP).

AEP, EGSI, Oncor, Reliant, and TNMP submitted comments to indicate their support of the comments submitted by EUMMOT, and in so far they did not differ from EUMMOT they are not reiterated in the preamble. Felcor's comments consisted of a letter expressing support of the comments filed by the THMA, and are therefore addressed as THMA comments in the preamble. ECC submitted comments on behalf of Alliant-Cogenex, Custom Energy, Sempra Energy Solutions, and Siemens Building Technologies. NAESCO, as a trade organization, submitted comments on behalf of its members. The hearing, however, revealed that NAESCO's comments were not supported by all of its members, and there was no NAESCO member present expressing support for the comments. The comments submitted by SPC did not indicate what parties belonged to the "coalition," and the signatory was not present at the hearing to provide the information. To the extent that comments provided at the hearing differ from the submitted written comments, such comments are summarized herein.

Comments on specific questions in the preamble of the proposed amended rules.

In the preamble, the commission requested that interested parties address three issues related to the implementation and final development of the proposed amendments to the rules. The parties' responses are summarized below.

Issue Number 1: The proposed amendment to §25.181(i)(3) is intended to increase EESP participation and encourage participation by smaller EESPs. Is this an appropriate policy goal? If yes, is the proposed method the most effective means to reach this goal?

Clifton stated that participation by smaller Energy Efficiency Service Providers (EESPs) is an appropriate policy goal because the city has few, if any, large EESPs capable of meeting the requirements for large contracts. The city does, however, have a number of small EESPs that would benefit from a small EESP set-aside. EUMMOT stated that this is an appropriate policy goal; but there should be an appropriate balance between small, local EESPs, and large, national EESPs. According to EUMMOT, oversight of numerous small projects increases administrative costs, some utilities budgets are too small to sustain numerous EESPs, and only larger contracts have the ability to meet the security requirements and the assurance that they will meet their contractual goals. EUMMOT stated that it is important to balance the goal of increasing participation by small EESPs with achieving the demand reduction goal, and the proposed language in the rule achieves this balance. EGSI, in separate comments, stated that changes to make the program more accessible to local EESPs will allow customers not only to comparison shop, but will allow customers to do business with local companies they know best, and is therefore good public policy.

OPC stated that the primary purpose of the rule should be to achieve the goals set forth in PURA §39.905 at the lowest possible cost. Therefore, if increased EESP participation leads to higher program costs, the proposed policy goal is inappropriate. According to OPC, the 20% limit placed on EESP participation in subsection (i)(3) increases the number of participating EESPs, thereby increasing customer choice. OPC recognized, however, that smaller utility programs may have difficulty in finding sufficient number of EESPs and concurred that a utility should be able to extend additional funding to a limited number of EESPs if no other EESPs are available to participate without having to seek a waiver. OPC stated that the amendment to subsection (i)(3) provides such balance, but recommended a longer waiting period, from 90 to 120 days.

SPC stated that increasing EESP participation and encouraging participation by small EESPs is an appropriate, albeit a secondary policy goal. Similarly to OPC, SPC argued that if this policy goal leads to increased program costs it is not appropriate, and should only be pursued if the administrative costs remain capped at 5.0% of program costs, as opposed to the proposed 10%. SPC stated it would be particularly inappropriate because it may reduce the amount of energy efficiency achieved under the program. SPC further stated that the proposed rule provisions have already been tested and it has been demonstrated that they are not effective in encouraging small EESP participation. According to SPC, the barrier to small EESP participation is not the size of the projects, but the difficulties with cash flow and the complexities of measure eligibility and pricing. Instead, the rule should address the cash flow problems and simplify the complex pricing policies by placing the 65% cap for lighting on the total incentive dollars, and use a lower percentage of the avoided costs rather than load factor caps. Free Lighting made similar statements during the APA hearing.

ECC strongly supported the policy goal of increasing EESP participation through the creation of a set-aside for smaller projects. ECC stated that this would empower customers to choose an EESP from a larger pool of EESPs than what is currently available. Moreover, having the pool of participants be as small as it is today gives the current participants in the standard offer programs an unfair market advantage. ECC advocated for stronger language that would specify a percentage of funds be set-aside for small projects and limit proposals to a number of units, and allow providers to apply for additional funds only after projects have been completed. ECC noted that the increased administrative burden of a larger pool of EESPs is more than off-set by the proposed 10% administrative allowance in the rule. In addition, at the APA hearing, ECC stated that the state of New Jersey had similar concerns and, as a result, opened the program up to a larger number of contractors. According to ECC, this action resulted in increased program participation at lower incentive amounts.

TACCA commented that, under the current rule, utilities have used the 20% provision under subsection (i)(3) to craft programs that limit customer choice and arguably fail the test of market neutral administration, particularly in the case of the residential and small commercial standard offer programs. TACCA asserted that having EESP participation limited to five (or even ten) EESPs limits customer choice to these EESPs for incentive funds, thereby giving these few EESPs undue market power. Moreover, as TACCA stated, having all the funds encumbered to a limited number of EESPs within a very short time frame does not guarantee that these EESPs will use all the incentive funds. According to TACCA, the proposed solution in the rule is too vague. TACCA proposed: 1) specifying a set-aside for small contracts of at least 25% of the total program budget; 2) making the incentive funds available only in increments of 10-15 units, until the EESP reaches the 20% limit; and 3) limiting multi-family projects to $5,000, and requiring an affidavit from the customer for any project larger than the threshold. According to TACCA, this will allow EESPs to experiment with the incentive programs, build confidence in their ability to sell energy efficiency, and increase customer choice by increasing provider participation. TACCA further stated that deposits may discourage bids from EESPs with no means at their disposal, but it will not discourage large EESPs from bidding the maximum amount in order to develop a market advantage over companies that do not have access to the incentive funds.

Consumer Groups supported the goal of increasing EESP participation if the increase is sufficiently large enough to create a vibrant energy efficiency market where competition reduces price and improves quality of service for residential customers. If, however, the only result is to increase EESP participation for large commercial and industrial customers, Consumer Groups noted that residential customers would be better of with fewer EESPs under increased regulatory oversight.

The commission agrees that participation by a larger number of contractors, particularly smaller contractors, is an appropriate policy goal. Increasing the number of contractors will foster the energy efficiency market generally, increase competition, and provide customers with greater choice between contractors and services. Ultimately, this should decrease price and improve quality for energy efficiency services. The commission agrees with TACCA that the 20% incentive cap on contractors has not

adequately addressed this issue, even if the timeline is extended as suggested by OPC. Most utilities have treated this provision as a means to limit participation by awarding contracts to only five EESPs. As a result, a limited number of EESPs exercise market power over the remaining EESPs who are unable to offer utility funded incentives to customers. However, requiring each utility to create a set-aside of at least 25% of program funding for small contractors will not be tenable for utilities with small budgets because there may be a limited number EESPs available in their service area. In addition, by creating small budgets, the program will lose its economies of scale. The commission must therefore balance the need to open up the program to a larger number of participants against the utility's ability to cost-effectively reach its goal. Setting a specific percentage will only serve to force small utilities to request a good cause exception, and may result in a set-aside that is too small for the large utilities. The commission finds that the proposed language as written is adequate. Utilities should have a set-aside budget for small contractors, and the commission fully expects that this set-aside be 25-30% of the program budget for the large utilities. The amount of the set-aside for small contractors will be specified in the utility's energy efficiency plan. The commission has revised §25.181(h)(2)(G) for this purpose. As stated in the proposed rule, the commission may adjust the allocation of the set-aside at any time. The commission disagrees with Consumer Groups with respect to the application of the set-aside. The intent of the provision is clear, in that it applies to residential and small commercial, and hard-to-reach programs only. The commission also disagrees with OPC and SPC that this will increase overall program costs and/or reduce energy savings because the proposed rule will not alter the cost-effectiveness standards or the utilities' current rates. TACCA's concerns regarding the limits placed on individual project submissions is more fully discussed under §25.181(h)(4)(A)-(B), below.

Issue Number 2: Under §25.181(j)(2)(E), the programs may require a maximum load factor, and allow utilities to rank proposals by load factor in order to more cost-effectively and competitively acquire demand savings. Is this an appropriate policy goal? If yes, is the proposed method the most effective means to reach this goal?

Clifton, EUMMOT, and OPC supported the provisions that would allow the use of load factor caps or the competitive selection based on load factors to reduce program costs. According to Clifton, the commission should not be concerned that this provision is somewhat untraditional in a standard offer program if the provision ensures that utilities meet their goal more cost-effectively, particularly if high load factor proposals dominate the initial application. EUMMOT stated that the acquisition of demand savings in a more cost-effective manner is an appropriate policy goal. EUMMOT stated that if a utility receives a large number of applications for incentive funds early in the enrollment period, the utility should be given the latitude to select proposals that provide the most cost-effective peak demand reductions, and ranking projects by load factor provides this tool. Without this tool, EUMMOT argued, utilities may be obligated to fund projects that provide energy savings, with minimal peak load reductions, thereby risking not being able to meet the peak reduction goal within their budgets.

THMA and TACCA stated that while they recognized the need to maximize cost- effective peak demand reductions, allowing utilities to rank projects by load factor could lead to projects that are less comprehensive. THMA stated that the proposal would hinder the ability of hotel and motel owners to participate in these programs. TACCA stated that it would, however, support placing a load factor cap for the overall project if the load factor cap is clearly publicized before the EESPs develop their projects. According to both TACCA and THMA, customers can work with energy efficiency service providers to choose the best mix of measures, knowing what level of incentives are available. They also proposed that the cap may be adjusted up or down, depending on how the market responds, as long as adequate notice is given of the adjustment.

ECC opposed the use of load factors to rank projects after they have been submitted. ECC argued that this would be contrary to a market-based standard offer program, in that it would place the utilities back in the role of judging what projects should be funded based on a competitive selection, meaning that actual eligibility terms would be calculated after the fact by comparing bids. ECC asserted that this would create uncertainty for the project sponsors the customers and lead to gaming in order to assure that some portion of a project would be funded, and likely lead to lowered effectiveness of the overall program. According to ECC, the customer should select the EESP and the measures in such a manner that best fits its needs. ECC did support language allowing the imposition of a reasonable load factor cap, as long as it is not overly restrictive and encourages more comprehensive projects and discourages "cream-skimming" projects. ECC also stated that it would support allowing the utility to lower the incentive levels in order to achieve the goal at a lower cost. However, ECC emphasized, the load factor caps and the incentive levels should be publicized well in advance.

ACEEE and SPC opposed both the imposition of load factor caps and/or reducing payments for higher load factors because this would reduce the incentives for energy savings. According to SPC, the proposal would severely impact the residential and small commercial participants whose electric bills are calculated only by the use of energy. SPC further stated that subsection (h)(2)(F) already allows setting of the incentive as a percentage of the cost-effectiveness standard without the distorting impacts of load factor caps, if the commission wishes to lower program costs. In addition, SPC claimed that the commission already ruled on this issue in response to a recommendation for a competitive selection in the preamble to the current rule, when it stated that each kW and kWh saved receive the same payment, regardless of the measures installed. Similarly, ACEEE argued that load factor caps were contrary to the legislative intent of the energy efficiency programs, in that they would focus attention on demand savings rather than energy savings. ACEEE stated that load factor caps would benefit the utilities, not the customer, and thus would provide private benefits, rather than public benefits as the legislature had intended. ACEEE and SPC argued that load factor caps do not reduce the cost of energy efficiency or energy savings; rather, they increase the cost of energy efficiency measures by the total costs per average saved kWh. They noted that load factor caps may reduce the total cost per kW saved but they increase the average cost per kWh saved. Therefore, ACEEE and SPC stated, the load factor cap negates the cost-effectiveness determination of the rule and will also distort the marketplace to favor those measures and applications with low load factors while discriminating against measures and applications with high load factors. In addition, they asserted that the use of load factor caps will increase the cost to administer the program and creates new complexities in the payment stream for the small EESPs. SPC also stated that a more reasonable approach would be to reduce the incentive levels for both kW and

kWh by the same percentage, rather than imposing load factor caps.

Consumer Groups also opposed the use of load factors to more cost-effectively acquire demand savings. According to Consumer Groups, placing load factor caps on programs will de-value energy efficiency applications for residential and low-income customers because they benefit most from measures with high load factors. Consumer Groups added that load factor caps would potentially eliminate measures with the highest energy savings, such as refrigerators and ceiling insulation. Consumer Groups further argued that setting load factor caps would put the utilities in the position of choosing the type of measures that will be installed under a standard offer program, which is contrary to the concept of a standard offer program. Consumer Groups requested eliminating the provisions in the rule dealing with load factors.

In reply comments, EUMMOT emphasized that at the time the rule was proposed, commission staff estimated program costs using assumed load factors for each customer class. These load factors were 42% for large commercial and industrial customers, 31.4% for residential and small commercial customers, and 77.6% for the hard-to-reach sector. EUMMOT pointed out that actual contract performance has shown that these load factors are currently substantially different. For example, the load factors for the most popular measures are as high as 114% and 76% for water-related measures and lighting respectively. EUMMOT stated that to the extent that a large number of project sponsors promote only high load factor measures, such as water-saving devices, the actual program costs could far exceed the assumed values when the rule was developed. At the APA hearing, EUMMOT stated that competitive selection based on load factor would not be appropriate for the hard-to-reach program because the program emphasizes a whole- house approach. Nor would it be appropriate for the commercial/industrial programs EUMMOT claimed, because the money has not been fully subscribed. But EUMMOT noted that it would be a useful tool in the residential/small commercial programs contractor selection.

In reply comments, ECC reiterated its opposition to the use of load factors to competitively rank projects, for it would discourage EESPs from offering measures that benefit customers in addition to low load factor measures. As an example, ECC pointed out that an air conditioning EESP that only offered air conditioners at a load factor of 21% would win over an EESP that offered air conditioning and insulation - a more comprehensive project that would provide greater benefits to the customer. On the other hand, ECC noted, imposing a reasonable load factor will encourage load factors and avoid "cream-skimming." ECC expressed surprise that OPC would support competitive ranking of projects by load factor for this would lead to projects that would provide the least cost savings to the customer. ECC emphasized the rule should strike a balance between peak demand reduction and lowering customer energy costs. SESCO provided similar comments at the APA hearing.

At the APA hearing, OPC emphasized that any use of load factors should not be used to artificially restrict funds intended for programs serving residential customers and move these funds to the large commercial/industrial class programs.

The commission finds that the rules should facilitate the ability of the utilities to meet the energy efficiency goal in the most cost-effective manner. The commission agrees, however, that ranking projects by load factor is not an appropriate policy. Such ranking would create uncertainty in the market and encourage EESPs to develop projects with the lowest load factor, rather than creating comprehensive projects that meet the customer needs, while also producing demand savings. The commission also agrees that competitive ranking would lead to the programs or utilities driving measure selection, rather than the market and customers driving measure selection, which is contrary to the market neutrality requirement of a standard offer program. The commission has therefore eliminated the provision that would allow utilities to competitively rank projects by load factor.

The commission disagrees with ACEEE, SPC, and Consumer Groups that the sole intent of PURA is to achieve an energy goal, rather than a demand goal, or create a public benefits program for customers. PURA §39.905 clearly states that the utilities must reduce their growth in demand, not energy consumption, by 10%. In doing so, the utilities must implement programs that reduce demand and energy, and reduce the customer's energy costs. The commission recognizes its obligation to balance the mandate to meet a peak demand goal, while reducing energy consumption for end-use customers. Historically, EESPs have argued against placing load factor caps on individual measures because high load factor measures would off-set the higher cost of low load factor measures. Unfortunately, experience has shown that EESPs have tended to gravitate towards projects that predominately consist of low-cost, high load factor measures such as lighting and water savers. The commission is concerned that if this trend continues, the utilities will not be able to meet the mandates of PURA §39.905 within their current budgets because too much of the program cost will go to saving energy, rather than to reducing demand.

The commission agrees with EUMMOT, ECC, Clifton, and TACCA that placing a reasonable load factor cap on projects is a legitimate means to ensure that projects will result in demand savings, encourage comprehensiveness, and discourage "cream- skimming" of low-cost, high load factor measures. The commission recognizes that this may increase the average cost per kWh saved, but will reduce the total cost per kW saved. However, this is somewhat irrelevant because the program goal is a demand goal, not an energy goal. Moreover, the program contemplates that customers will bear a part of the cost of measures installed in their homes or businesses. The commission does share the concern that if the load factor caps are too low, the caps may eliminate some measures that are particularly beneficial to low-income customers. The commission also agrees that it may not be to the benefit of the overall program if there is great variation in load factor caps among utilities. The commission therefore finds that the maximum load factor caps should be set at a reasonable level that balances the need to achieve demand savings and provide energy and cost reductions to the end use customers. In addition, the commission finds that load factor caps should be publicized well in advance to allow EESPs, in conjunction with their customers, to develop meaningful projects within the available incentive perimeters. The commission has revised the §25.181(j)(2)(E) accordingly. In addition, for the purpose of clarity, the commission has added definitions for "demand savings" and "load factor" to the definitions section under §25.181(c).

The commission also finds that adjusting incentive levels is an appropriate method to control program costs. Adjusting incentive levels is consistent with the underlying market philosophy, for the adjustment would occur in response to the market. The commission concurs, however, that, like load factor caps, incentive adjustments must be publicized well in advance to allow EESPs

to EESPs, in conjunction with their customers, to develop meaningful projects within the available incentive parameters. The commission has revised the rule accordingly.

In reference to OPC's comments regarding the possibility of utilities manipulating load factors in such a manner that it will shift funds from one customer class to another customer class, the commission finds that load factors should be set at a level reasonable for the customer class, and should be adjusted in response to market conditions. Utilities will expend funds consistent with the budgets submitted in the energy efficiency plans, and any funding shifts between customer classes should only occur in extraordinary circumstances. The commission will monitor these expenditures based on the annual energy efficiency report. The commission has not revised the rule in response to this comment.

Issue Number 3: The Texas Health and Safety Code, Title 5, Subtitle C, Chapter 386, requires that new construction in Texas meet the International Energy Conservation Code (IECC). The market transformation programs under §25.181(k) are a means to encourage the new home construction market to comply with and exceed the IECC. What should be the appropriate baseline for such a market transformation program? If the baseline is based on market practice and the market practice is below the IECC, should a utility be allowed to claim savings that are above the baseline but below the IECC?

Cardinal and EUMMOT stated that actual industry practices, as established through analysis, should set the baseline from which energy efficiency savings and peak demand reductions should be calculated. Cardinal argued that the existence of a code requirement does not necessarily result in market compliance with that requirement by a date certain. EUMMOT pointed out that market transformation programs fall into two categories: those that address the whole house and those that target specific types of equipment. Both Cardinal and EUMMOT stated that as one is a performance approach (whole house) and the other is a component approach (equipment), the IECC will affect these programs differently. According to EUMMOT, this provides for differing justification for using actual industry practice. In the case of the whole house approach, Cardinal and EUMMOT believed that actual industry practice is justified because it will take time for the IECC to be fully implemented. Incentives, however, according to EUMMOT should only be paid for kW and kWh savings above the IECC to ensure that funds are not used to simply enforce the building code. In the case of the component approach, the builder may follow a performance path and make various efficiency trade-offs. According to EUMMOT, because trade-offs are permitted, there are no real component-level efficiency requirements for building components under IECC, aside from other existing efficiency standards. EUMMOT noted that the baseline study could reveal that the average window or air conditioner installed in the service area is below IECC's prescriptive path, even though the whole house meets the IECC through the performance path. Therefore, they proposed that a baseline study be conducted to identify industry practices and provide a benchmark. According to EUMMOT, the average values found through the baseline study should be used in savings calculations. While EUMMOT supported the proposed amendment as published, it offered some additional language to clarify the above described situation. Cardinal, however, stated that utilities should be permitted to count improvements over actual, real-world baselines rather than the IECC; otherwise utilities will not invest in market transformation programs. Cardinal recommended additional rule language that in establishing the baseline, consideration should be given to the regional implementation of the IECC, and that such consideration shall not preclude establishment of a baseline below the IECC "prescriptive" component, where such compliance is permitted by the IECC through alternative building designs or measures.

OPC stated that the baseline prescribed by the rule should be the IECC standard, unless the utilities can prove that a different baseline applies within its service area. If this is the case, OPC argued that the utilities should be able to claim any savings above the alternative baseline. OPC noted, however, that the utilities should have the burden of proof and it should require that the commission grant a good cause exception to the rule.

SPC stated that market transformation programs should be treated in the same manner as standard offer programs in determining the baselines to be used to calculate and claim savings. Therefore, according to SPC, the baseline should be no lower than the mandated IECC standard. In the alternative, SPC proposed that standard offer programs should also be allowed to calculate savings from a standard market practice baseline. According to SPC, no incentives should be paid for savings resulting from measures that would have been installed without the incentive or for merely complying with existing regulations. Similarly, Consumer Groups stated that the IECC should be the standard baseline and any savings claimed should be limited to savings that exceed the IECC standard. Consumer Groups recognized, however, that there may be extenuating circumstances within local communities, but that solutions to these circumstances should be fully explored in the energy efficiency implementation project (EEIP) under subsection (n).

During the APA hearing, Aspen Systems stated that it supported having the baseline be above the IECC, regardless of the existing local code, but expressed concern that this does not address alternative building codes or materials. Aspen noted that such codes are subject to review and approval by Texas A&M University, and therefore recommended tying Texas A&M University into the rule provision. Similarly, Cardinal indicated that there appear to be contradictions between Senate Bill 5 (77th Leg., Ch. 967, 2001 Texas General Laws 2084) and Senate Bill SB 365 (77th Leg., Ch. 120, 2001 Texas General Laws 238), which are still being reviewed. In addition, according to Cardinal, local municipalities may modify the IECC and submit their alternative code for review by Texas A&M University. TACCA stated that such modifications have led to varying code requirement within small geographic areas, which has made the situation confusing to contractors.

The commission agrees with Cardinal and EUMMOT that the IECC offers a performance approach (whole house) and a component approach (equipment), and that the IECC will affect energy efficiency programs differently. This provides for differing justification for using actual industry practice. In the case of the whole house approach, actual industry practice is justified because it will take time for the IECC to be fully implemented. Incentives, however, should only be paid for kW and kWh savings above the IECC to ensure that funds are not used to simply enforce the building code. In the case of the component approach, the builder may follow a performance path and make various efficiency trade-offs. Because trade-offs are permitted, there are no real component-level efficiency requirements for building components under IECC. The average window or air conditioner installed in a service area may be below IECC's prescriptive path,

even though the whole house meets the IECC through the performance path. Therefore, a baseline study should be conducted to identify industry practices and provide a benchmark. The average values found through the baseline study should be used in savings calculations. However, the commission is concerned that there appears to be substantial uncertainty as to the level of implementation and varying interpretations of the IECC and the statutory mandates under Senate Bills 5 and 365. It also appears that energy codes may vary considerably across the state. The commission therefore finds that the development of benchmarks for the purpose of the new home construction programs should be further explored in the EEIP and a recommendation be made to the commission at a later date.

General Comments

Consumer Groups commented that the April 1, 2002 energy efficiency plans filed by the utilities show little progress in reaching the energy efficiency goal and in offering energy efficiency programs to customers, and that the utilities are maintaining their notoriously poor energy efficiency record. Consumer Groups reiterated its previous recommendation under Project Number 21074, *Energy Efficiency Programs,* that utilities pilot residential standard offer programs rather than offering them on a large scale. Consumer Groups conceded, however, that the information in the April 1, 2002 reports did not contain sufficient information to make any definitive conclusions.

The commission finds that the information set forth in the April 1, 2002 reports cover program year 2001, predating the official start-up date of the programs on January 1, 2002. During that year, the utility program budgets were limited to funds available in the bundled rates, the utility did not have a demand goal, and most utilities operated pilot programs to test the new program designs. It is therefore premature to draw any conclusions regarding the program effectiveness based on the 2001 data. The commission agrees, however, that the programs should be subject to ongoing monitoring.

NAESCO stated that there is no empirical evidence to support any of the proposed changes in the rule. According to NAESCO, the proposed changes, such as eligibility, pricing, administration, and customer/technology targeting through load factor caps, would reduce the commission's oversight of major elements of program administration. NAESCO argued that it simply does not work to turn over major areas of program control to one party in a complex public benefits program. NAESCO sited California as an example of how regulatory uncertainty has a detrimental effect on the energy efficiency industry. According to NAESCO, many energy efficiency projects are being delayed because the California commission has attempted to shift major areas of responsibility such as program development to the utilities. Conversely, New York has a successful energy efficiency program because it is based on modest incentives, has maintained consistency over time, and the state commission has retained control over key program elements, such as eligibility, incentive levels and targeting.

NAESCO appears to misunderstand the mandates of PURA §39.905 and the proposed revisions to the rule. Whereas other states provide funding for energy efficiency without setting goals for the programs, PURA §39.905 requires that utilities meet a quantifiable demand reduction goal. The proposed rule revisions do not shift control over program elements from the commission to the utilities; rather, the changes provide clarification as to the utility responsibilities and facilitate the ability of the utilities to meet the goal in a more cost-effective manner, while providing meaningful benefits to the customers. The commission finds that there is no correlation between the California, New York and Texas programs in this regard. The commission has made no revisions in response to NAESCO's comments.

§25.181(c), Definitions

In reference to §25.181(c)(1), EUMMOT agreed that the definition of "affiliate" should be included in the rule; however, EUMMOT argued that the "at least 5.0%" threshold of the definition should be modified to 15% or 20% as this modification could be equally effective in ensuring broad-based participation.

The commission rejects EUMMOT's proposal to change the "at least 5.0%" threshold in the definition of "affiliate" to a 15% or 20% threshold. The commission notes that such a change is unnecessary. The affiliate definition adopted in the rule comes directly from the Final Order in Project Number 22241, *Energy Efficiency Program Implementation Docket; P.U.C. Proceeding to Implement the Requirements of §25.181 relating to the Energy Efficiency Goal.* The commission already decided on a 5.0% threshold and declines the invitation to reconsider its decision.

ECC suggested clarifying the definition of "energy efficiency" under paragraph (7) to include "materials" and energy gains as well as losses.

ECC did not provide any justification for the proposed change and the commission finds none. No change was made in response to this comment.

In reference to paragraph (8), definition of "energy efficiency measure," ECC, THMA, and TACCA recommended that a measure should reduce energy or demand, but should not be required to do both. ECC and TACCA also stated that it would be appropriate to require that a project reduce both energy and demand. This will allow EESPs to install a combination of measures that in the aggregate will save both energy and demand, and be more comprehensive. ECC and TACCA stated that this would be a more market neutral approach and therefore be more consistent with the intent of a standard offer program.

The commission agrees that individual measures should not be required to result in both energy and demand savings, for this may discriminate against measures that may well fit in the package of aggregate measures. The commission has replaced the word "and" with "or," and has reinserted "or both" in subsection (c)(8).

In reference to the definition of "energy efficiency project" under paragraph (9), ECC, THMA, and TACCA, consistent with comments regarding paragraph (8), stated that, unlike an individual energy efficiency measure, a project should result in the reduction in the customer's energy consumption and peak demand. ECC emphasized that it is willing to support a load factor cap so that projects will achieve both energy and demand reductions.

The commission agrees that a project should achieve both energy and demand savings, and result in reductions in energy costs. This is consistent with the mandate in PURA §39.905 that requires that the utilities meet a demand goal, while also providing benefits to the customer. The commission has revised the definition of energy efficiency project under subsection (c)(9) accordingly. In reference to ECC's comment regarding load factor caps, this issue is fully discussed in the commission response under Preamble Issue Number 1.

Clifton supported the provision under paragraph (10) that allows customers to be their own project sponsor because it had a number of public and private agencies that are potential project sponsors.

EUMMOT commented that the definition of "peak demand reduction" under paragraph (24) may have the effect of disqualifying measures that reduce equipment run time for periods of less than one hour. EUMMOT suggested rephrasing the definition so that the assigned demand reduction will reflect the average anticipated impact over a full hour. OPC questioned whether the intent of the provision was to calculate the total curtailment of demand during one hour or to require curtailment of demand for minimum of a continuous hour. OPC recommended that it refer to the total rather than a continuous hour because otherwise most residential projects would not qualify. Consumer Groups commented that the definition should be revised such that it assures that all measures with high energy efficiency savings are available to residential and low-income customers.

The commission agrees that requiring load curtailment to occur for a continuous hour would preclude most residential applications. The commission finds that the intent of the definition is that the value of the peak load curtailment refers to the average total during an hour. The commission adopts EUMMOT's recommendation and has revised the rule accordingly.

In reference to the definition of peak demand under paragraph (25), SPC claimed that restricting the peak period to between 1:00 p.m. and 7:00 p.m. was not discussed in an Energy Efficiency Implementation Docket (EEID now EEIP) meeting, is inconsistent with utility practice, and inconsistent with commission approved peak periods. According to SPC, the commission has made an affirmative decision not to specify the hours in its definition of peak demand and that the utility cost of service cases are largely silent on this issue. SPC argued that this is an "unsponsored" rule change that is not consistent with commission approved tariffs. Moreover, SPC proposed that the period should be extended to include October, consistent with TXU's residential tariff. SPC argued that in no way should the rule impose a definition that is more restrictive for the purpose of energy efficiency than that which is used for billing purposes.

At the public hearing, Nexant recommended that the definition should be further restricted to weekdays during the period of May 1 through September 30.

The commission is constrained only by the substantive law, PURA §39.905, and procedural law, the Texas Administrative Procedures Act. A rule change need not to be "sponsored" by any party or reviewed by the EEIP. Moreover, the commission finds restricting peak demand during specific hours of the day is entirely consistent with standard utility practice, even if the specific seasons and hours may vary between utilities. For the purpose of this rule, the commission finds that setting the peak season from May through September, with a daily peak period from 1:00-7:00 p.m. on a statewide basis is appropriate. In reference to SPC's comment that the proposed definition of peak period in the rule is different from the definition used for the purpose of billing, the commission finds that this comment is irrelevant. The peak period for electric demand in Texas is summer afternoons. The utility rates differ from company to company, in how they define summer months, and there are very few customers on time-of-use rates. For ease of carrying out the energy efficiency program, the commission believes that a uniform definition of peak period that corresponds with actual demand is appropriate. The commission declines to modify the rule based on these comments.

In reference to Nexant's comment regarding weekdays, the commission concurs that it should be restricted to week days and has revised the rule so that it applies to all days, "except for federal holidays and weekends." In addition, the commission has made the same revision in §25.182(c)(11).

SPC objected to the elimination of the provision that allowed multiple energy efficiency service providers to participate under one standard offer contract under §25.181(c)(28) because it would preclude an EESP from subcontracting with other entities for goods and services. In addition, SPC claimed that this change is highly anti- competitive in that it limits participation to those few project sponsors that do not use or need other service providers, and will therefore also have an adverse effect on small EESP.

At the APA hearing, AEP recommended that the reference regarding the targeted weatherization programs administered by the Texas Department of Housing and Community Affairs (TDHCA) be moved to the definition of "standard offer program" under §25.181(c)(29), because these programs fit better within the definition of "standard offer program," rather than with the definition of "standard offer contract."

The commission finds that the proposed revision does not preclude an individual EESP from subcontracting with other providers for any needed goods or services. The revision does clarify, however, that only entity the entity under contract with the utility is ultimately accountable for all project activities. The commission declines reinserting the language. In reference to the comment by AEP regarding the TDHCA programs, the commission agrees this provision should be moved to §25.181(c)(29), and has revised the rule accordingly.

§25.181(d), Procedure for determining affiliate status

EUMMOT supported developing a better defined process for determining whether various project sponsors are affiliates. However, EUMMOT argued that the proposed methodology for determining affiliate status is flawed in several ways. First, EUMMOT contended that the burden of proof should not be placed on the utilities to both investigate affiliate status and to determine whether an affiliate relationship exists. EUMMOT indicated that investigating affiliate status is very expensive and time consuming, since such investigations require obtaining legal advice, conferring with investigative consultants, and prodding EESPs to make available information that EESPs are unwilling to provide. Second, EUMMOT argued that proposed §25.181(d) would be duplicative and cumbersome because every utility will be investigating the same set of EESPs and would then have to initiate proceedings. Finally, EUMMOT indicated that the proposed methodology would lead to considerable administrative litigation.

In lieu of the proposed methodology, EUMMOT recommended that the commission develop a registration process to determine whether energy EESPs are affiliates. In the alternative, EUMMOT recommended that the commission adopt a methodology by which EESPs would file affidavits affirming or denying their affiliate status. Furthermore, EUMMOT contended that burden of establishing or denying affiliate status should be on the EESPs rather than on the utilities.

SPC stated that the proposed procedure for determining affiliate status does nothing more than shift the decision to the commission. Furthermore, SPC stated that placing the burden of proof on utilities to determine affiliate status is unfair to both the utilities

and to the EESPs: utilities are given an impossible responsibility; EESPs are at the mercy of the utility until a potentially time consuming process has been completed. Additionally, SPC noted that the proposed methodology would be duplicative because the same information would be required by many utilities.

In lieu of the proposed methodology, SPC proposed deleting subsections (d)(1)-(3) and replacing them with a section stating that utilities shall require potential EESPs to register with the commission listing. The registration would include identification of any affiliates with others on the registration listing prior to or concurrent with their approval as service providers. SPC contended that its proposed methodology should be deemed conclusive of the affiliate issue, unless reversed in accordance with staff's proposed subsections (d)(4)-(6).

Consumer Groups argued that procedures for determining affiliate status are outside the scope of the rule and therefore should not be included. Consumer Groups noted that the definition of affiliates and their relationships is a specialty area that has application to many commission rules.

Clifton agreed that the process for determining affiliate relationships must be streamlined. It proposed a generic project to monitor affiliate status, or to incorporate determination of affiliate status within the Energy Efficiency Implementation Project (EEIP). Clifton stated that rather than having each utility bring evidence of affiliate status to the commission in separate proceedings, interested EESPs should be required to fully disclose all pertinent information regarding affiliate status with other potential participating EESPs. Clifton argued that its proposed methodology would decrease uncertainty for EESPs and utility administrators, while allowing for more rapid deployment of programs. Finally, Clifton noted that its methodology would avoid separate utility filings for each standard offer program.

During the public hearing, Oncor indicated that reliance on affidavits is not the best methodology but could be an acceptable alternative methodology. It indicated that past reliance on affidavits did not resolve the affiliate issue. Furthermore, Oncor stated that reliance on affidavits could lead to continuing administrative litigation at the commission. Also, Oncor indicated that it did not believe that a registration process would require a separate rulemaking. Moreover, Oncor stated that utilities should not have to be involved in determining affiliate status but that the commission should be involved in this matter. Finally, Oncor indicated that a registration process might be modeled after the process for certification of retail electric providers in which the commission would develop a form that would require EESPs to provide information that would allow the commission to determine whether EESPs are affiliated with one another.

Free Lighting stated that under a registration process, the commission would examine the same factors that the utilities would have examined, if the utilities were performing an affiliate investigation.

During the public hearing, AEP supported Oncor's comments, stating that affidavits are likely to cause confusion. AEP illustrated this point by referring to an instance in which it had two sets of affidavits: one set was to be used if there was an affiliate relationship between project sponsors; the other set was to be used if there was no such relationship. AEP stated that there were sponsors who executed both affidavits. Therefore, AEP supported a registration process as a methodology for determining affiliate relationships.

Consumer Groups expressed concern that a registration process would place hurdles in the path of small EESPs. Consumer Groups indicated that such an effect is contrary to the goal of increasing EESP participating, especially in the small commercial and residential sector. In response to Consumer Groups' comments, Oncor stated that a registration process would be less burdensome because EESPs would not be asked different questions from different utilities with which they intend to do business. Oncor noted that a registration process would allow EESPs to provide information once. SESCO also responded to Consumer Groups' concerns, stating that EEPS would not necessarily have to register until after they are awarded a contract. SESCO generally supported EUMMOT's proposed registration process.

In response to a question concerning affidavits, SESCO stated that an affidavit could be used to show the absence of an affiliate relationship. SESCO reasoned that if an affiliate relationship exists, it is possible to adduce evidence supporting the existence of such relationship, but that it is not possible to use documentation to show that an affiliate relationship does not exist .

In response to the question about the type of documents that utilities examine to determine whether an affiliate relationship exists, EUMMOT stated that utilities examine secretary of state filings and state licensing requirements for membership on boards or directorships.

The Consumer Groups' assertion that the affiliate issue should not be addressed in this rule is premised on the notion that the definition of affiliate and methodology for determining affiliate status adopted in this rule will apply to other proceedings in which affiliate status is at issue. This premise is incorrect. The definition and methodology adopted in this rule applies only in the energy efficiency context. It does not apply to any other context, because it was not created to address other contexts in which affiliate issues might arise. The commission finds that it should address the affiliate issue to the extent that it can in this rule.

The commission understands that the affiliate issue is a fact intensive inquiry. Furthermore, this issue arises solely when there is a possibility that 20% or more of available funds will go to affiliated companies. EUMMOT, SESCO, Free Lighting, Oncor, and others invited the commission to develop a registration process, whereby the commission will have the burden of determining whether each project participant is an affiliate. The commission declines to do so. The burden of gathering the information and conducting an investigation is properly on the utilities, which have the duty to administer energy efficiency programs. Proponents of a registration process argue that it is less burdensome because project participants need to provide information only to the commission rather than to several utilities with which they might transact business. While the commission recognizes that this is an advantage of project participant registration, it would be burdensome for the commission to gather the data and serve as a repository for this information. Given that the affiliate issue is germane only when more than 20% of available funds will go to affiliated companies, the issue should not arise with sufficient frequency to justify the administrative burden of a formal registration process.

However, the commission agrees with the comments of EUMMOT, Oncor, and SPC that the burden of proving affiliate status should not be on the utilities. The utilities should have the initial burden to investigate EESPs with which they plan to conduct business - this burden is inherent in the utilities' duty to administer energy efficiency programs. Assuming that there exists a possibility that 20% or more of available funds will go to possibly

affiliated companies, those companies should have the burden to respond to the utility's concerns, since they seek to participate in the programs and they have access to information that would address the affiliate issue. Thus, the commission changes subsection (d)(2) accordingly.

The commission rejects SPC's argument that the methodology initially proposed is flawed because it requires EESPs to wait several months before a decision on affiliate status is rendered. First, the commission notes that the issue of affiliate status arises solely in those circumstances in which 20% or more of the funds available for a particular program will go to affiliated companies. Thus, affiliated companies that fall below the 20% level will remain unaffected. Second, a determination of affiliate status is a fact intensive inquiry. Consequently, the process by its nature is time consuming. Finally, a registration process might also be time consuming, given that the data would have to be collected and then analyzed.

Furthermore, the commission rejects the arguments of EUMMOT and Oncor that the proposed methodology will result in considerable administrative litigation. First, the affiliate issue will arise only in those circumstances in which 20% or more of available project funds go to possibly affiliated companies. Second, it is unclear that the registration process contemplated by EUMMOT would be less administratively burdensome than addressing the issue through litigated proceedings. Finally, a registration process would not eliminate litigation. The staff might render a recommendation, based upon the information obtained, that certain project participants are affiliates. Assuming that the project participants disagree with the staff's recommendation, the matter would become contested.

As discussed below, the commission adopts the rule change that eliminates the requirement to maintain a list of qualifying EESPs. Accordingly, the commission rejects SPC's proposed affiliate methodology, which assumes the existence of such a list.

§25.181(e), Cost effectiveness standard

In reference to subsections (e)(2)(A), ECC recommended that the word "annual" be inserted between "avoided" and "cost", and that kW value be set on an annual basis. These changes would clarify that avoided cost figures refer to an annual value of avoided cost.

The commission agrees that the rule language would benefit from the proposed change and has revised the rule to clarify that these costs are annual values.

In reference to subsection (e)(2)(C), OPC opposed the deletion of the reference to projects having to be "designed to enhance air quality and improve reliability of electric service in the nonattainment area, or both."

The commission finds that that energy efficiency projects will enhance air quality and improve reliability by reducing electric production and congestion on the transmission system. The commission also finds that placing the requirement that such projects be designed to enhance air quality and improve reliability is superfluous, and may only serve to create an unnecessary burden of proof. The commission declines to reinsert the provision.

§25.181(f), Annual growth in demand

In reference to subsection (f), EUMMOT stated that the current formula for calculating growth in demand based on historical data often yields unreasonable results, particularly for small utilities, when a large customer enters or leaves the system. EUMMOT stated that such a one-time, historical, and non-recurring event could unduly impact the utility's future goal for energy efficiency. EUMMOT recognized that the commission attempted to address this issue in its proposed revisions, but noted that it would still require a utility to file a good cause waiver from the rule provision. EUMMOT also pointed out that including load forecasts in the formula may not be feasible because utilities may not have such forecasts available to them in a restructured market. EUMMOT suggested language that would allow the utilities to make adjustments to the formula for non-recurring events or factors affecting the historical demand data and submit an alternative formula for good cause without commission oversight.

SPC objected to the provision under §25.181(f)(3) that would allow a utility to submit an alternative method for calculating growth in demand for commission approval. SPC stated that this will result in energy efficiency always getting the short end of the stick, even if the approved request is reasonable in those instances in which the changes are requested by the utility. According to SPC, it is reasonable to assume that the utilities will only seek an adjustment to reduce the energy efficiency goal, and thus reduce the total amount of energy efficiency below what it should be over the long term.

ECC suggested deleting the language in proposed subsection (f)(4) because the statute requires that utilities achieve demand savings *of at least* 10% of the growth in demand and, therefore, utilities should not have to seek commission approval for increasing their energy efficiency goal.

Consumer Groups reiterated their position that the energy efficiency goal should be on energy, not peak demand, and claimed that this would be more consistent with PURA §39.905. Consumer Groups did not, however, object to allowing utilities to request a good cause exception, but stated that if utilities are allowed to reduce their energy efficiency goal there should be a concomitant reduction in the revenue requirement for energy efficiency.

In reply comments, ECC objected to EUMMOT's proposal to allow utilities to recalculate their growth in demand without commission approval. ECC commented that the rule, as proposed by staff, should at least provide opportunity for staff and interested parties to provide insight and comments on any utility request to lower its energy efficiency goal.

The commission agrees that the utilities should not be allowed to use an alternative methodology without commission review and approval. The commission also agrees that generally the utility will seek an alternative methodology in order to reduce the goal, rather than to increase the goal. In such cases, the methodology should be reviewed within the context of the funding approved for energy efficiency programs. The statute sets a minimum demand reduction goal, therefore, either utility may exceed its 10% goal by expending approved funding, or carry excess funding over to the next program year for future energy efficiency activities. The commission also emphasizes that whenever a utility seeks a good cause exception, such good cause should be based on exceptional circumstances of short duration that would have a distorting impact on the results of the prescribed methodology. The commission declines to revise the rule.

§25.181(h), Energy efficiency plan

ACEEE and CPS stated that the proposed language in subsection (h)(2)(F) appears to shift the authority to set incentive levels from the commission to the utilities, and allows the utilities

to change incentive levels during the program year. ACEEE and SPC argued that this could lead to wide variation in incentive levels across the state during different times of the year, and would lead to a disjointed, chaotic market that will lead to lower participation, reduced net impact, and less cost-effective programs. They further noted that varying incentive levels across the state would result in customers arbitrarily being subjected to lower incentives than other customers within the same customer class. ACEEE was particularly concerned that utilities would take advantage of this provision and lower the incentive levels even further, with devastating consequences for the programs. ACEEE recommended that the commission set the current incentive levels as a minimum and allow the utilities to adjust incentive levels upwards. SPC stated that any such adjustment should be subject to a commission proceeding and commission approval.

ECC stated that if the utilities may adjust incentive levels during the program year as allowed under subparagraph (h)(2)(F), they should be required to provide ample advance notification to the EESPs. As long as there is sufficient notification through electronic mail and the Internet exchange, ECC stated it could support this provision. Similarly, Consumer Groups recommended adoption of the proposed language that would allow the utility to set incentive levels, but objected to having the incentives adjusted during the program year because it sends the wrong signal to the market.

NAESCO opposed allowing utilities to adjust incentive levels without commission review.

Consistent with the discussion under Preamble Issue Number 2, the commission finds that the utilities may adjust incentive levels in response to the market, as long as incentive levels are well publicized in advance to allow EESPs, in conjunction with their customers, to develop meaningful projects within the available incentive parameters. Similarly to setting maximum load factor caps and allowing incentive adjustments based on load factors, the commission recognizes the possibility that this may lead to varying incentive levels across the state. However, this should not lead to lower participation because the utilities must meet their goals, and will therefore adjust incentives upwards if the market does not respond or they are unable to meet other obligations under the rule. The commission also finds that requiring that such adjustments be subject to commission approval would be too time consuming and undermine the utility's ability to respond to market forces. In reference to the comment that varying incentives will potentially subject customers to lower incentives compared to customers of the same class in other areas, the commission notes that incentives are not made available to the customer. Incentives are made available to the EESP, who may or may not, pass this benefit along to the customer. The commission declines to revise the rule.

In reference to former §25.181(h)(3)(B), NAESCO commented that removing the commission maintained list of qualifying project participants represents a shift in power away from the commission and to the utilities. SPC contended that the commission should be required to maintain this list. It asserted that during the adoption of the original rule, the commission decided to maintain the list to avoid violations of §25.272 (relating to *Code of Conduct for Electric Utilities and Their Affiliates*). It also contended that both project sponsors and customers would benefit from a commission maintained list. SPC noted that the original rule, which required the commission to maintain this list, had been extensively discussed. It also asserted that potential liability could be avoided through appropriate disclosures. Moreover, SPC argued that some utilities have been reluctant to provide a list directly to other project sponsors or to customers because of concerns about restrictions against marketing and affiliate concerns.

SPC also contended that the commission, and not utilities, should maintain a list. It argued that there exists the possibility for abuse if utilities were to maintain the list, and the utility might set standards and procedures to benefit one group of EESPs to the detriment of others. Referencing a discussion in the preamble to the current rule regarding old §25.181(j)(2)(N)(sic) (reference should be §25.181(i)(2)(M)), relating to EESP qualifying criteria, SPC claimed that the commission recognized that utilities may abuse their qualifying authority in developing the list. SPC argued that any standards regarding project participants must be established by the commission rather than by the utilities.

EUMMOT stated that the commission should not have to maintain the list, arguing that maintaining such a list was burdensome to the commission and could be misconstrued as an endorsement of EESPs by the commission. EUMMOT proposed adding the following language to the §25.181: "The utility may provide the public with information regarding the identity of EESPs that are presently or have previously participated in a program sponsored by the utility." EUMMOT recommended that the utilities offer a list of participating EESPs on their web site and refer public inquiries to their site. EUMMOT also stated that the list could be read over the phone or mailed to an energy consumer who does not have internet access. EUMMOT indicated that the list could include a disclaimer, stating that the commission does not endorse any EEPS on the list.

In reply comments and during the public hearing, ECC stated that it would support the development of a list for the public. However, ECC stated that EUMMOT's proposed language is overly broad. ECC argued that utilities should be limited to providing a web site and responding to customer inquiries. ECC also stated that a disclaimer should be mandatory, it should be included in the rule, and it should provide that neither the utility nor the commission endorse any particular EESP. Finally, ECC stressed the importance of limiting a utility's ability to promote its programs or approved EESPs.

During the public hearing and in comments, EGSI expressed a desire to be able to inform interested parties about the EESPs with which it has contracted. Free Lighting stated that the commission should maintain this list. SESCO indicated that it would not oppose the utility developing and distributing a list.

The commission agrees with EUMMOT's position, as modified by the proposal of ECC: the utilities should be allowed to maintain a list of EESPs and should be allowed to disclose this information to members of the public who inquire. However, the commission agrees with ECC that the utilities should be limited to providing a website and answering specific customer inquiries. The commission rejects SPC's argument that the commission needs to maintain a list. First, the commission rejects as unfounded the argument that utilities' maintenance of a list would lead to abuse--the utilities would have to include a list of all EESPs with which they transact business. Second, contrary to SPC's statement, the commission never decided in adopting the original §25.181 that it needed to provide a list to avoid a possible violation of §25.272. In adopting original §25.181, the commission stated that "It would *not be* a violation of §25.272 (relating to the Affiliate Code of Conduct) for a utility to distribute a list compiled by the commission or OPC" (emphasis added). The commission

did not state that it would be a violation of §25.272 if the utilities were to maintain a list. Nor did the commission ever view the maintenance of this list as a means for the commission to maintain oversight over the quality of the EESPs participating in the programs. Quality of EESPs has always been and will continue to be the responsibility of the utility. The commission has added new §25.181(i)(2) allowing the utility to make the list available to the public, with the restriction proposed by ECC.

§25.181(i), Utility administration

In reference to subsection (i), Clifton and EUMMOT supported allowing the utilities to expend 10% of their budget on administration of the programs. EUMMOT stated that the original assumptions regarding the administrative burden of the programs have proved to be inaccurate and that the administrative burden is in fact much greater than anticipated and will be even greater under the proposed rule. EUMMOT offered a comparison with other state programs that showed that the average cost of administration is 25% of total program costs. In addition, EUMMOT offered a fairly detailed analysis of all the activities (outreach, program development and enhancement, general administration, inspections and measurement and verification) that utilities must undertake to administer the programs. In addition, EUMMOT stated that these programs are in their early stages and require a collaborative effort between commission staff, industry, advocacy groups, utilities and other interested parties to modify the programs in response to the changing market and efficiency standards. EUMMOT argued that, therefore, the utilities should be allowed to retain the 10% administrative allowance. Clifton stated that utilities should be awarded, not penalized, for any efforts to achieve the goal more cost effectively. Clifton noted that the additional tasks imposed by the rule, such as increased EESP participation, will ultimately benefit the citizens of Clifton and justify a 10% administrative allowance. EGSI stated that increasing EESP participation, particularly small EESPs, will increase outreach activities, inspections, review of paperwork and general "hand-holding." These increased activities justify keeping the administrative costs at 10%.

Consumer Groups did not oppose allowing utilities to expend 10% of the program budget as long the utilities are required to provide a detailed budget regarding the activities under §25.181(i)(1)(A)-(D). Consumer Groups therefore supported the provision under §25.181(h)(4)(G). Consumer Groups objected, however, to §25.181(i)(1)(E) that would allow the utilities to incur any "other costs as necessary and justifiable for successful program implementation."

NAESCO expressed concern over allowing utilities to reduce payouts by 10% for administrative expenses, rather than 5.0%. OPC and SPC opposed allowing the utilities to maintain 10% administrative costs, rather than reducing the allowance to 5.0%. OPC stated that such increases will raise the costs to the REPs, and thus increase the price-to- beat. According to OPC, administrative costs under traditional programs are 15%, and these programs are more costly because the utility must design, implement, monitor, and sometime even perform energy efficiency services. Therefore, 5.0% of total program costs for administration should be more than adequate for a standard offer program. SPC stated that the commission already decided this issue in its discussions regarding the current rule, and stated that these considerations, with the exception of attracting smaller EESPs, remain the same. According to SPC, best practices in other states, particularly California, indicate that a 5.0% administrative cap is reasonable. Increasing the administrative allowance is therefore not justified. SPC further stated that the rule should be clarified that the cost of administration should not be subtracted from the incentives. SESCO provided similar comments at the public hearing.

In reply comments, EUMMOT provided further analysis regarding the costs involved in administering the energy efficiency programs in Texas, as well as a comparison to the California programs. According to EUMMOT, a number of activities under the Texas programs are not borne by the California utilities, particularly in the areas of program design, determination of incentive levels development of deemed savings estimates, outreach and proposal evaluation. In addition, the Texas budgets are small compared to California and do not provide the economies of scale. Therefore, EUMMOT argued, the utilities should be allowed to expend 10% of the budget on administration.

The commission finds that parties have provided sufficient data to demonstrate that allowing the utilities to expend up to 10% of the budget on administrative activities is justified, particularly in light of some of the additional burdens imposed on the utilities under the revised rule. In addition, the rule provides clear guidelines regarding allowable administrative activities and the utilities must now also justify administrative expenditures in the annual energy efficiency reports. The commission disagrees with Consumer Groups that subparagraph (E) should be eliminated because it provides a safe- way for necessary activities that are not otherwise directly addressed in the rule. The commission also disagrees with the SPC that the 10% administrative allowance should not be deducted from the available incentive funds, for this would violate the cost- effectiveness requirements. The commission declines to revise the rule.

In reference to subsection (i)(2), NAESCO expressed concern over allowing utilities to bypass EESPs and provide rebates and incentives directly to large commercial and industrial customers. ECC stated that it accepted that large commercial and industrial customers may act as their own project sponsor, and the utility should be allowed to share information if the customer approaches the utility, but objected to allowing the utility to notify a customer about the program directly. According to ECC, the intent of the statute is to develop a market for EESPs. Alternatively, ECC proposed that the utility should only be allowed to approach customers directly if there is insufficient number of EESPs signing up after 180 days of opening up the program. Consumer Groups also objected to allowing utilities to communicate directly with large commercial and industrial customers. Consumer Groups stated that this may give large commercial and industrial customers a competitive advantage over other market players.

Customers have always been allowed to act as their own project sponsor under §25.181. The revised rule restricts these customers to large commercial and industrial customers. In addition, the revised rule clarifies that utilities may inform such customers of the program as they would any other potential project sponsor or EESP. Restricting such outreach activities to third party EESPs would be discriminatory towards customers acting as their own project sponsors. The commission disagrees that the intent of the statute was to foster or subsidize the EESP market. The intent of the statute is to foster energy efficiency in general through standard offer and market transformation programs. The commission declines to make revisions to the rule based on these comments.

In reference to subsection (i)(3), ESC stated that it supported the 90-day provision because it allowed for sufficient time to fully

develop and implement a project after the 90 days have lapsed. ECC stated that allowing a utility to automatically waive the 20% limitation if insufficient number of EESPs have signed up after 90 days, as proposed under subsection (i)(3), creates an incentive for utilities to perform insufficient outreach to encourage EESPs to participate. ECC recommended that, at a minimum, utilities should be required to wait 180 days and be subject to commission approval upon finding that the utility has made satisfactory effort to attract EESPs.

The commission agrees that the utilities appear to have an incentive to restrict the number of EESPs participating in the program, and thus may not be particularly active in conducting outreach to encourage increased participation. The commission therefore finds that utilities should wait 180 days before waiving the 20% limit and should file with the commission documentation of outreach efforts. If the commission finds that the utility's outreach efforts are insufficient, the commission may require the utility to conduct additional outreach.

SPC recommended that reference to incentive request under subsection (i)(4)(A) should be clarified to be "each" incentive request, so as not to limit an EESP to a single request. SPC also recommended that the cap be changed from 30 dwelling units to a dollar cap because small residential projects do not involve dwelling units and depending on the kind of work 30 units may involve large amounts of money.

The commission agrees that "dwelling" units may not be applicable for a small commercial project, and that dwellings may involve large amounts of money. The commission therefore revises the reference to 30 dwelling units to a $5,000 cap. The commission also agrees that the EESP is not limited to a single request and has inserted the word "each" in subsection (i)(4)(A).

SPC requested that the affidavit requirement under subsection (i)(4)(B) be changed to "letter of intent or equivalent" because an affidavit is too legalistic and may scare away participants. In addition, according to SPC, the large commercial programs do not have such a requirement. ECC fully supported the provision under subsection (i)(4)(B) that would require a signed affidavit from the project host for projects costing over $10,000. ECC stated that this will prevent EESPs locking in large amounts of incentive moneys and creating a market advantage, without having actual customers lined up. However, according to ECC, the provision appears to be misplaced because this should apply to larger projects, not projects carried in the small EESP set-aside.

The commission disagrees that requiring an affidavit is too legalistic for it is the only document that would make the commitment legally binding. The commission also finds that $5,000 is the proper threshold to require such a commitment from a project host. The commission does agree that the provision should apply to both large commercial and industrial projects, as well as residential and small commercial projects. The commission further agrees that the provision appears to be misplaced and has moved the provision to new paragraph (5).

In reference to subsection (i)(4)(C), SPC requested that this provision be deleted and the utility be allowed to abandon this procedure if the market place has not demonstrated a significant interest in this procedure. SPC proposed that this provision be automatically waived if the set-aside is not subscribed by 75% after 180 days.

The utility is the entity primarily responsible for formulating the amount of the set- aside appropriate to the size of its energy efficiency budget. In addition, the utility appears to have little incentive to actively promote the set-aside. Therefore, the commission finds the utility must file a request a waiver for good cause.

§25.181(j), Standard offer program

In reference to §25.181(j)(2)(E), ECC, THMA, and TACCA reiterated their opposition of the use of load factors to rank projects for purpose of project selection, but supported the use of load factor caps, if the caps are well publicized ahead of time. ECC and TACCA positions regarding this issue are fully summarized under Preamble Issue Number 2. Consumer Groups recommended that, in the interest of residential and low- income customers, the provision be deleted. NAESCO expressed concern over allowing utilities to reduce payments for energy savings through the use of maximum load factors and using load factors to select projects or set incentive levels.

As discussed under Preamble Issue Number 2, the commission finds that ranking of load factors for the purpose of competitive selection is not appropriate. In addition, the commission finds that reasonable load factor caps are appropriate and necessary to reduce program costs and encourage comprehensive projects. The load factor caps should, however, be publicized well in advance.

SPC strongly objected to §25.181(j)(2)(O) that would allow utilities to use prior performance to limit EESP participation in the program. According to SPC, this provision is too vague and should address issues such as liability of subcontractors, sharing of information between utilities and access to such information, applicability of performance under one program to other programs, etc. SPC recommended that this issue be further explored in the EEIP. Consumer Groups also stated that the provision is too vague and recommended that prior performance be clarified to mean poor quality performance.

As discussed under §25.181(c)(28), the commission finds that ultimately the project sponsor is accountable for all projects activities, including the performance of subcontractors. Utilities must be able to prevent EESPs with a poor track record from participating in the program and be given the ability to control the quality of the EESPs who participate in the programs. This is particularly important because the program operates on a first-come, first-serve basis rather than a competitive basis. The commission disagrees, however, that the rule should specify all the possible criteria that may constitute poor performance, and how information is shared among market participants. The commission also disagrees that the quality of work may be the sole criterion; a contractor may produce quality work, but fall short on production and thereby risk the utility's ability to meet the goal. The commission finds that "poor" performance is a sufficient standard and has revised the rule accordingly.

Miscellaneous comments

EUMMOT commented that word "contract" should be changed to "program" under §25.182(g)(1)(B), (7) and (8) to keep the rules internally consistent.

The commission finds that the proposed changes are appropriate for §25.182(g)(1)(B) and §25.182(g)(7) and has made the revisions. The commission finds, however, that it is appropriate to place additional reporting requirements in it contract with the utility and therefore declines to make the revision to §25.182(g)(8).

OPC recommended that the rule should allow some type of commercial new construction program.

The rule does not address specific program templates. Rather, such program templates should be developed by the utilities or within the context of the EEIP and submitted for commission approval. The commission therefore finds that this proposed addition to the rule is outside the scope of this rulemaking.

At the APA hearing, SESCO questioned when the rule provisions would take effect, particularly since these provisions could affect programs that are currently being implemented.

The commission finds that it would not be appropriate to have the rule revisions become effective 20 days after submission to the Secretary of State because that may affect programs that are currently being implemented. The revised rules will be in effect for any programs with a start date of January 1, 2003. This will give utilities sufficient time to incorporate these changes in the programs being developed for 2003 and will give market participants sufficient notice regarding the impending changes. The commission has added new §§25.181(p), 25.182(h), and 25.183(f) to state the effective date of the revised rules.

All comments, including any not specifically referenced herein, were fully considered by the commission. The commission has made other minor modifications for the purpose of clarifying its intent and for grammatical purposes. In addition, on September 1, 2002, the name of Texas Natural Resource and Conservation Commission changed to Texas Commission on Environmental Quality. This conforming change has been made in §25.181 and §25.183.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated (PURA) §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction; and specifically, PURA §39.905 that requires that the commission promulgate rules to implement the energy efficiency goal and under the Health and Safety Code, Title 5, Subtitle C, Chapter 386, Subchapter E, Energy Efficiency Grant Program.

§25.181. Energy Efficiency Goal.

(a) Purpose. The purposes of this section are to ensure that:

(1) electric utilities administer energy savings incentive programs in a market-neutral, non-discriminatory manner, and do not provide competitive energy efficiency services, except as permitted in §25.343 of this title (relating to Competitive Energy Services);

(2) all customers, in all customer classes, have a choice of and access to energy efficiency alternatives that allow each customer to reduce energy consumption and energy costs; and

(3) each electric utility provides, through market-based standard offer programs, or limited, targeted market-transformation programs, or both, incentives sufficient for retail electric providers and competitive energy efficiency service providers to acquire additional cost-effective energy efficiency savings equivalent to at least 10% of the electric utility's annual growth in demand by January 1, 2004, and each year thereafter, as mandated by the Public Utility Regulatory Act (PURA) §39.905.

(b) Application. This section applies to electric utilities, as that term is defined in §25.5 of this title (relating to Definitions). This section shall not apply to an electric utility subject to PURA §39.102(c) until the expiration of the utility's rate freeze period.

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

(1) Affiliate --

(A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of an energy efficiency service provider;

(B) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;

(C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by an energy efficiency service provider;

(D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:

(i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of an energy efficiency service provider; or

(ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; or

(E) a person who is an officer or director of an energy efficiency service provider or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;

(F) a person who actually exercises substantial influence or control over the policies and actions of an energy efficiency service provider;

(G) a person over which the energy efficiency service provider exercises the control described in subparagraph (F) of this paragraph;

(H) a person who exercises common control over an energy efficiency service provider, where "exercising common control over an energy efficiency service provider" means having the power, either directly or indirectly, to direct or cause the direction of the management or policies of an energy efficiency service provider, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or

(I) a person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of an energy efficiency service provider even though neither person may qualify as an affiliate individually.

(2) Calendar year -- January 1 through December 31.

(3) Competitive energy efficiency services -- Energy efficiency services that are defined as competitive under §25.341 of this title (relating to Definitions).

(4) Deemed savings -- A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy and peak demand savings determined through measurement and verification activities.

(5) Demand -- The rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(6) Demand savings -- A quantifiable reduction in the rate at which energy is delivered to or by a system at a given instance, or average over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(7) Demand side management (DSM) -- Activities that affect the magnitude or timing of customer electrical usage, or both.

(8) Energy efficiency -- Programs that are aimed at reducing the rate at which electric energy is used by equipment and/or processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by customer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower customer cost.

(9) Energy efficiency measures -- Equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kWs, or both.

(10) Energy efficiency project -- An energy efficiency measure or combination of measures installed under a standard offer contract or a market transformation contract that results in both a reduction in customers' electric energy consumption and peak demand, and energy costs.

(11) Energy efficiency service provider (EESP) -- A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or large commercial customer, if the person has executed a standard offer contract.

(12) Energy savings -- A quantifiable reduction in a customer's consumption of energy.

(13) Existing contracts -- Energy efficiency contracts in effect prior to September 1, 1999, that expire on or after September 1, 1999.

(14) Growth in demand -- The annual increase in load, measured on the transmission system, in the Texas portion of an electric utility's service area at time of peak demand, as measured according to subsection (f) of this section.

(15) Hard-to-reach customers -- Customers with an annual household income at or below 200% of the federal poverty guidelines.

(16) Incentive payment -- Funding that reduces the cost of installing energy efficiency measures, or provides a service or benefit that would otherwise not be available to the end-use customer for installing energy efficiency measures.

(17) Inspection -- Onsite examination of a project to verify that a measure has been installed and is capable of performing its intended function.

(18) Large commercial customers -- Retail commercial or industrial customers with a demand that exceeds 100 kW. For the purpose of this subsection, a customer's load within a service territory that is under common ownership shall be combined.

(19) Load control -- Activities that place the operation of electricity-consuming equipment located at an electric user's site under the control or dispatch of an energy efficiency service provider, an independent system operator, or other transmission organization.

(20) Load factor -- The ratio of average load to peak load during a specific period of time, expressed as a percent. The load factor indicates to what degree energy has been consumed compared to maximum demand or utilization of units relative to total system capability.

(21) Load management -- Load control activities that result in a reduction in peak demand on an electric utility system or a shifting of energy usage from a peak to an off- peak period.

(22) Market transformation program -- Strategic efforts to induce lasting structural or behavioral changes in the market that result in increased adoption of energy efficient technologies, services, and practices, as more fully described in subsection (k) of this section.

(23) Measurement and verification (M&V) -- Activities intended to determine the actual kWh and kW savings resulting from energy efficiency projects as more fully described in subsections (l) and (m) of this section.

(24) Off-peak period -- Period during which the load on an electric utility system is not at or near its maximum volume. For the purpose of this section, the off-peak period will be all hours from October 1 through April 30.

(25) Peak demand -- Electrical demand at the time of highest annual demand on the utility's system, measured in 15 minute intervals.

(26) Peak demand reduction -- Peak demand reduction on the utility system during the utility system's peak period, calculated as the maximum average demand reduction over a period of one hour during the peak period.

(27) Peak period -- Period during which a utility's system experiences its maximum demand. For the purposes of this section, the peak period is from May 1 through September 30, during the hours between 1:00 p.m. and 7:00 p.m., excluding federal holidays and weekends.

(28) Renewable demand side management (DSM) technologies -- Equipment that uses a renewable energy resource (renewable resource), as defined in §25.173(c) of this title (relating to Goal for Renewable Energy) that, when installed at a customer site, reduces the customer's net purchases of energy (kWh), electrical demand (kW), or both.

(29) Small commercial customers -- Retail commercial customers with a maximum demand that does not exceed 100 kW.

(30) Standard offer contract -- A contract between an energy efficiency service provider and a participating utility specifying the standard payment based upon the amount of energy and peak demand savings achieved through the installation of energy efficiency measures at electric customer sites, the measurement and verification protocols, and other terms and conditions, according to the program requirements.

(31) Standard offer program -- A program under which a utility administers standard offer contracts between the utility and energy efficiency service providers. For the purposes of this section, the targeted weatherization programs under PURA §39.903 (relating to the System Benefit Fund) to be administered by the Texas Department of Housing and Community Affairs shall be considered a standard offer program.

(d) Procedure for determining affiliate status.

(1) The utility shall have the burden to investigate each energy efficiency service provider that participates in a standard offer or

market transformation program to determine whether such energy efficiency service provider is an affiliate of any other energy efficiency service provider that has submitted a project.

(2) In any proceeding to determine affiliate status, the Energy Efficiency Service Provider (EESP) shall have the burden of proof.

(3) Upon discovering evidence that an energy efficiency service provider is affiliated with another energy efficiency service provider, the utility shall notify such energy efficiency service providers in writing and shall include evidence supporting the allegation with the notification; the utility shall file this notification together with supporting evidence with the commission. If the utility relies upon an affidavit to demonstrate the existence of an affiliate relationship, the affidavit shall conform to Texas Rules of Civil Procedure §166a(f) and Texas cases construing this rule.

(4) Upon discovering evidence that an energy efficiency service provider is affiliated with another energy efficiency service provider, any party (complainant) may file such claim, together with supporting evidence, with the commission. If the complainant relies upon an affidavit to demonstrate the existence of an affiliate relationship, the affidavit shall conform to Texas Rules of Civil Procedure §166a(f) and Texas cases construing this rule. A complainant shall notify the energy efficiency service provider and utility in writing and include all supporting evidence with the notification.

(5) Upon receipt of a utility's or complainant's notification, the energy efficiency service provider will timely respond to the utility's or complainant's allegations and file such response, together with documentation supporting the response, with the commission. If the energy efficiency service providers rely upon an affidavit to contradict any of the utility's evidence, the affidavit shall conform to Texas Rules of Civil Procedure §166a(f) and all Texas cases construing the rule.

(6) All filings submitted pursuant to paragraphs (3), (4), and (5) of this subsection will be used as evidence by the commission to render a decision on affiliate status.

(e) Cost-effectiveness standard.

(1) Cost-effectiveness. An energy efficiency project is deemed to be cost-effective if the cost of the project to the utility is less than or equal to the benefits of the project. The cost of a project includes the cost of incentives, the measurement and verification costs, and program administrative costs. The benefits of the project include the value of the purchased electrical energy saved, the value of the corresponding generating capacity requirements, and associated reserves displaced or deferred by the project. The present value of the project benefits shall be calculated over the projected life of the measure, not to exceed ten years.

(2) Avoided cost. Incentives shall be set as a percentage of the avoided cost. The avoided cost shall be the estimated cost of a new gas turbine.

(A) Initially, the avoided cost of capacity savings shall be set at $78.5/kW saved annually at the customer's meter.

(B) Initially, the avoided cost energy savings shall be set at 2.68 cents/kWh saved annually at the customer's meter.

(C) The commission may adjust the cost effectiveness standard prescribed in subparagraphs (A) and (B) of this paragraph by using an environmental adder up to 20% for targeted projects conducted in an area that is not in attainment for air emission that is subject to the regulations of the Texas Commission on Environmental Quality (TCEQ). The environmental adder is available only for targeted energy efficiency projects that would not be implemented without the adder.

(f) Annual growth in demand and energy efficiency goal. Electric utilities shall meet the minimum mandate of 10% reduction in growth in demand through energy efficiency savings by January 1, 2004. Each utility is required to meet, at a minimum, 5.0% of its growth in demand though energy efficiency by January 1, 2003. Each utility's energy efficiency goal shall be specified as a percent of its historical five-year average rate of growth in demand, calculated as follows:

(1) Each year's historical demand growth data shall be adjusted for weather fluctuations, using weather data for the most recent ten years. The utility's growth in demand is based on the average growth in retail load in the Texas portion of the utility's service area, measured at the utility's annual system peak for the immediately preceding five years.

(2) The goal for energy-efficiency savings for a year is calculated by applying the percentage goal, prescribed in this subsection, to the average rate of growth in demand, based on the average of the five preceding annual growth rates. The baseline for calculating demand growth shall be reset each year.

(3) A utility may submit for commission approval an alternative method to calculate its growth in demand, for good cause.

(4) The utility, subject to commission approval, may increase its energy efficiency goal for targeted projects conducted in an area that is an affected county or a nonattainment area, as defined in §25.182 of this title (relating to the Energy Efficiency Grant Program).

(g) Basic program elements. Electric utilities shall administer energy efficiency programs designed to achieve reductions in the customer's purchased energy consumption or demand, or both, and lower energy costs through the implementation of standard offer programs or limited, targeted market transformation programs.

(1) Each electric utility shall submit energy efficiency plans and reports to the commission in accordance with subsection (h) of this section.

(2) Incentive payments shall be made under either standard offer contracts or market transformation contracts, or both, for kWs and kWhs saved. The amount of the incentive payment may vary by customer class in order to effectively reach all customer classes, including hard-to-reach customers. Market transformation programs may offer other incentives or benefits as approved by the commission.

(3) Customer protection provisions shall be included in all electric utilities' energy efficiency programs in accordance with subsection (o) of this section.

(4) All projects performed under a standard offer program shall be subject to inspections, measurement, and verification in accordance with subsection (l) of this section. Energy and peak demand savings under market transformation projects shall be verified in accordance with subsection (k) of this section.

(5) The commission shall establish an implementation project, as described in subsection (n) of this section, to address program design, implementation and administration, and make recommendations to the commission.

(h) Energy efficiency plans.

(1) Schedule. Each electric utility shall by April 1, 2001, and annually thereafter, file its updated energy efficiency plan and an annual energy efficiency report as described in paragraph (4) of this subsection.

(2) Energy efficiency plan. Each electric utility's energy efficiency plan shall describe how the utility intends to achieve the legislative mandate and the requirements of this section. Beginning January 1, 2002, the plan shall be on a calendar year cycle and shall project at least a four-year period. The plan shall propose an annual budget sufficient to reach the 10% legislative goal by January 1, 2004, and annually thereafter. Each electric utility's energy efficiency plan shall include:

(A) A projection of the utility's annual growth in demand based on actual historical data calculated using the methodology and corresponding energy and peak demand savings goal to be achieved under the plan, as defined in subsection (f)(2) of this section.

(B) A description of existing contract obligations and an explanation of the extent to which these contracts will be used to meet the utility's annual energy efficiency requirements. Only additional energy and peak demand savings achieved as a result of projects installed after the effective date of this section may count towards the amount of energy and peak demand savings actually achieved on an annual basis.

(C) An estimate of the energy and peak demand savings to be obtained through each separate standard offer program, market transformation program, or both.

(D) The proposed design and plan for each of the utility's standard offer programs and market transformation programs, including measurement and verification plans when appropriate. For statewide standard offer programs or market transformation programs previously approved by the commission, the program may simply be identified with a description of how it will be implemented in the service territory of the utility. Programs not previously approved by the commission should be presented in detail, including baseline studies, for review and approval.

(E) A description of the customer classes targeted by the utility's energy efficiency programs, specifying the size of the hard-to-reach, residential, small commercial, and large commercial and industrial customer classes, and the methodology used for estimating the size of each customer class.

(F) The incentive levels for each customer class shall be a percentage of the avoided cost set forth in subsection (e) of this section. The incentive levels for individual programs shall be set by each utility subject to the incentive ceilings outlined below and other provisions of this section. Utilities may adjust incentive levels for individual programs during the program year, but such adjustments must be clearly publicized in the program application guidelines. Until the commission adopts different ceilings for incentive levels, incentive levels for standard offer programs may not exceed:

(i) 100% for hard-to-reach customers.

(ii) 50% for other residential and small commercial customers.

(iii) 35% for large commercial and industrial customers.

(iv) 15% for load management programs.

(G) The proposed annual budget required to implement the utility's standard offer program, market transformation program, or both, broken out by program for each customer class, including hard-to-reach customers, and the amount for the small contractor set-aside pursuant to subsection (i)(4) of this section. The proposed budget should detail incentive payments, utility administrative costs, including the independent M&V expert, and the other administrative functions pursuant to subsection (i)(1) of this section, and the rationale and methodology used to estimate the proposed expenditures.

(H) Savings achieved through programs for hard-to-reach customers shall be no less than 5.0% of the utility's total demand reduction goal.

(I) Savings achieved through load management programs, including interruptible rates, may not exceed 15% of the utility's total demand reduction goal.

(J) A discussion of the types of informational activities the utility plans to use to encourage participation in standard offer programs or market transformation programs, including the manner in which utilities will use to post notice of standard offer programs, market transformation programs, and any other facts that may be considered when evaluating a project.

(3) Prior to the implementation of the energy efficiency program, the commission shall:

(A) Approve market transformation programs and standard offer programs.

(B) Review and approve measurement and verification plans, including deemed savings in accordance with the standard offer or market transformation program guidelines. Projects that require installation-specific measurement and verification may have a measurement and verification process approved by the utility. At the utility's option, the measurement and verification process or deemed savings may be submitted for pre- approval by the commission.

(4) Annual energy efficiency report. The annual energy efficiency report shall provide information listed below:

(A) The utility's projected annual growth in demand calculated using the methodology prescribed in subsection (f) of this section.

(B) The corresponding energy and peak demand savings goal for the utility, as defined in subsection (f)(2) of this section, expressed in kWs and kWhs, for the current calendar year.

(C) The utility's actual annual growth in demand for the preceding calendar year.

(D) The most current information available comparing projected savings to reported savings for each of the utility's standard offer programs and market transformation programs.

(E) The most current information available comparing reported savings and verified achieved savings as verified by the independent M&V expert for all programs.

(F) The most current information available comparing the baseline and milestones to be achieved under market transformation programs.

(G) A statement of funds expended by the utility for incentive payments, program administration pursuant to subsection (i)(1) of this section, including inspections, and the independent M&V expert.

(H) A statement of any funds that were committed but not spent during the year, by project.

(I) Any decreases by more than 10% in total program cost, with an explanation for the decrease in cost.

(J) Any remaining program funds that were not committed during the year.

(K) The most current information available of ongoing and completed energy efficiency projects by customer class that includes:

(i) Number of customers served by each project.

(ii) Project expenditures.

(iii) Verified energy and peak demand savings achieved by the project, when available.

(L) A description of proposed changes in the energy efficiency plans.

(M) Any other information prescribed by the commission.

(i) Utility administration. Utilities shall administer standard offer programs, market transformation programs, or both, to meet the requirements of the energy efficiency goal in PURA §39.905. The cost of administration may not exceed 10% of the total program costs.

(1) Administrative costs include costs necessary for utility conducted inspection and the independent M&V expert as required under subsections (l) and (m) of this section, and the costs necessary to meet the following requirements:

(A) Conduct informational activities designed to explain the standard offer programs and market transformation programs to energy efficiency service providers and vendors.

(B) Review and select proposals for energy efficiency projects in accordance with the guidelines of the standard offer programs under subsection (j) of this section, and market transformation programs under subsection (k) of this section.

(C) Inspect projects to verify that measures under a standard offer contract were installed and capable of performing their intended function, as required in subsection (l) of this section, before final payment is made. Such inspections shall comply with PURA §39.157 and §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates).

(D) Review and approve energy efficiency service providers' savings monitoring reports for both standard offer contracts and market transformation contracts.

(E) Any other costs as necessary and justifiable for successful program implementation.

(2) A utility administering a standard offer program or a market transformation program shall not be involved in directly providing customers any energy efficiency services, including any technical assistance for the selection of energy efficiency services or technologies, unless the customer is a large commercial customer and the activities are limited to the outreach activities outlined in paragraph (1)(A) of this subsection, or unless a petition for waiver has been granted by the commission pursuant to §25.343 of this title. A utility may provide interested parties a list of EESPs who have participated or are currently participating in the utility's energy efficiency programs. In providing the list, the utility may not endorse or favor any EESP.

(3) The utility shall compensate energy efficiency service providers for energy efficiency projects in accordance with the contract and the requirements of this section. An individual energy efficiency service provider and its affiliates may not receive more than 20% of the total incentive payments available for a particular standard offer program, unless the program is not fully subscribed after 180 days, and the utility has demonstrated that it has performed adequate outreach.

(4) The utility, in its energy efficiency plan pursuant to subsection (h)(2) of this section, shall have a funding set-aside in an amount appropriate to the utility's program budgets for hard-to-reach or residential and small commercial customers for small projects. The commission may adjust the allocation of the set-aside for individual utilities at any time. Under this funding set-aside:

(A) Each incentive request for the hard-to-reach, residential and small commercial customer projects may not exceed $5,000.

(B) A utility may petition the commission for waiver of this limitation if the utility can demonstrate that the utility would not be able to meet its annual energy savings goal under this limitation.

(5) Incentive reserve requests for projects for individual sites or customers exceeding $10,000 shall require a signed affidavit of participation by the project host.

(6) Projects or measures under either the standard offer or market transformation programs are not eligible for incentive payments or compensation if:

(A) A project would achieve demand reduction by eliminating an existing function, shutting down a facility, or operation, or would result in building vacancies, or the re- location of existing operations to locations outside of the facility or area served by the participating utility.

(B) A measure would be installed even in the absence of the energy efficiency service provider's proposed energy efficiency project. For example, a project to install measures that have wide market penetration would not be eligible.

(C) A project results in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.

(D) The project involves the installation of self-generation or cogeneration equipment, except for renewable DSM technologies.

(7) Cost recovery and unspent funds. Funds for achieving the energy efficiency goal will be included in each utility's transmission and distribution rates. Each utility shall track its energy efficiency expenditures separately from other expenditures and report these in their annual energy efficiency report. Funds not spent within a given year shall be considered as a source of funding for the following year, and the commission shall consider utilities' requests to roll over unspent funds on a case-by-case basis in connection with the utilities' annual energy efficiency report filing under subsection (h)(4) of this section.

(8) Each utility shall meet its energy efficiency goal annually through the acquisition of cost-effective energy and demand savings, in accordance with this section . A utility shall be deemed to have met its energy efficiency goal when the utility achieves a 10% reduction in growth in demand calculated as prescribed in subsection (f) of this section.

(A) Funds approved in the utility's rates for the purpose of the energy efficiency goal under PURA §39.905 shall be used exclusively to acquire cost-effective energy efficiency savings, even if such savings exceed the utility's energy efficiency goal.

(B) Notwithstanding the costs approved in the utility's cost of service rates, the utility must acquire cost-effective energy efficiency savings equivalent to at least 10% of the utility's annual growth in demand by January 1, 2004, and each year thereafter, by administering programs consistent with this section.

(j) Standard offer programs. A utility's standard offer program shall be implemented through standard offer contracts. The standard offer contract shall describe the terms and conditions according to the

requirements of this section for energy efficiency service providers for the delivery of energy efficiency services. Standard offer contracts will be available to any energy efficiency service provider that satisfies the contract requirements within the commission approved program parameters.

(1) Statewide standard offer programs shall be developed and submitted to the commission for approval. Utilities may use the commission approved statewide standard offer programs without further commission review. Other standard offer programs will require commission review for approval.

(2) A utility's standard offer program shall meet the following requirements:

(A) A standard offer program shall be developed to address each customer class. Specific different programs may be developed to address hard-to-reach customers. All customer classes must have access to an equitable share of the incentive funds.

(B) Each standard offer program will offer a standard incentive payment and specify a schedule of payments. The incentive shall be set at a level sufficient to meet the goals of the program and shall be consistent with the ceiling under subsection (h)(2)(F) of this section, or any revised ceiling adopted by the commission. The standard offer incentive payments may include both payments for kW and kWh savings, as appropriate. Except for load management projects, the incentive payment may vary by customer class, but not within a customer class.

(C) Peak demand and energy savings for each project shall be identified in the proposals the energy efficiency service providers submit to the utility.

(D) Standard offer programs shall not limit eligibility to specific technologies, equipment, or fuels, but shall be neutral with respect to such factors. Energy efficiency projects may lead to switching from electricity to another energy source, provided the energy efficiency project results in overall lower energy costs, lower energy consumption, and the installation of high efficiency equipment. Switching from gas to electricity is not allowable under the program.

(E) Standard offer programs may require maximum load factor criteria for project eligibility.

(i) Increasing load factors may be subject to a decreasing incentive scale.

(ii) Load factor caps and corresponding incentive scales must be clearly publicized in the program application guidelines.

(F) All projects must result in a reduction in purchased energy consumption, or peak demand, or both, and a reduction in energy costs for the end-use customer.

(G) Comprehensive projects incorporating more than one energy efficiency measure shall be encouraged. Lighting measures shall be limited to 65% of the savings of each project. When a project consists of lighting measures only, compensation shall not exceed 65% of the ceiling for that class under subsection (h)(2)(F) of this section.

(H) Projects shall result in consistent and predictable energy and peak demand savings over a ten-year period.

(I) A utility shall not condition the provision of any product, service, pricing benefit, or alternative terms or conditions upon the purchase of any other good or service from the utility or its competitive affiliate, except that only customers taking transmission and distribution services from a utility can participate in its energy efficiency programs.

(J) Projects shall disclose potential adverse environmental or health effects associated with the energy efficiency measures to be installed.

(K) Projects shall include the procedures for measuring and reporting the energy and peak demand savings from installed energy efficiency measures, consistent with the requirements under subsection (l) of this section.

(L) Standard offer programs shall provide a complaint process that allows:

(i) The energy efficiency service provider to file a complaint against a utility.

(ii) A customer to file a complaint against an energy efficiency service provider. The utility may use customer complaints as a criterion for disqualifying energy efficiency service providers from participating in the program.

(M) Renewable DSM technologies are allowed.

(N) A standard offer program shall require contractors to provide the following:

(i) Evidence of good credit rating.

(ii) List of references.

(iii) All applicable licenses required under state law and local building codes.

(iv) Evidence of all building permits required by governing jurisdictions.

(v) Evidence of all necessary insurance.

(O) A utility may use poor performance as a criterion to limit or disqualify an energy efficiency service provider or its affiliate from participating in the programs.

(k) Market transformation programs. Market transformation programs are strategic efforts, including, but not limited to, incentives and education designed to reduce market barriers for energy efficient technologies and practices. Market transformation programs must be designed to obtain energy savings and peak demand reductions beyond savings that would be achieved through compliance with building codes and equipment efficiency standards. Utilities should cooperate in the creation of regional or statewide programs, consider statewide administration where appropriate, and where possible, leverage with existing effective national programs that have the potential to save energy in Texas. Statewide market transformation programs shall be developed under the implementation project to address targeted customer classes, as described in subsection (n) of this section. The programs shall be filed for commission review and approval. Utilities may use the statewide commission approved market transformation programs without further commission review. All other market transformation programs will require commission review for approval. Market transformation programs shall be conducted through projects that describe the terms and conditions as required under this section for the delivery of energy efficiency services. Market transformation programs must meet the following criteria:

(1) Competitive solicitation shall be the preferred method for contract selection. Pilot projects may be developed by an individual utility, a group of utilities, or an energy efficiency service provider. A utility may request a waiver from the requirements of a competitive solicitation for good cause.

(2) A market transformation project shall identify:

(A) Project goals.

(B) Market barriers the project is designed to overcome.

(C) Key intervention strategies for overcoming those barriers.

(D) Estimated costs and projected energy and capacity savings.

(E) A baseline study that is appropriate in time and geographic region. In establishing a baseline, the study shall consider the level of regional implementation and enforcement of the International Energy Conservation Code (IECC), when applicable. However, this consideration shall not preclude establishment of a baseline below the IECC "prescriptive" component performance compliance levels where such compliance is permitted by the IECC through alternative building designs or alternative measures. The baseline for new construction programs shall be developed by the Energy Efficiency Implementation Project (EEIP) and submitted to the commission for approval.

(F) Project implementation timeline and milestones.

(G) Method for measuring and verifying savings.

(H) Period over which savings shall be considered to accrue, including a date for final market transformation.

(I) Each proposed project shall include a description of how it will achieve the transition from extensive market intervention activities toward a largely self-sustaining market.

(3) The project must be cost-effective, under the standard in subsection (e) of this section.

(4) The project must be designed to achieve energy or peak demand savings, or both, and lasting changes in the way energy efficient goods or services are distributed, purchased, installed, or used.

(l) Inspection, measurement and verification. Each standard offer program shall include an industry accepted measurement and verification protocol approved by the commission as part of the detailed energy efficiency plan that will be used to measure and verify energy and peak demand savings to ensure that the goals of this section are achieved.

(1) The energy efficiency service provider is responsible for the measurement of energy and peak demand savings using the approved measurement and verification protocol, and may utilize the services of an independent third party for such purposes.

(2) Commission approved deemed energy and peak demand savings may substitute for the energy efficiency service provider's measurement and verification where applicable.

(3) Each customer shall sign a certification indicating that the measures contracted for were installed before final payment is made to the energy efficiency service provider.

(4) An energy efficiency service provider may request a utility inspection at its own expense in the event a customer refuses to sign the measure installation certification.

(5) For residential and small commercial customer projects involving over 30 installations, a statistically significant sample of installations will be subject to on-site inspection in accordance with the protocol set out for the project. Inspection shall occur within 30 days of notification of measure installation to ensure that measures are installed and capable of performing their intended function. The energy efficiency service provider shall not receive final compensation until the customer documents work completion and the utility has conducted its inspection on the sample of installations.

(6) Residential and small commercial customer projects of less than 30 installations may be aggregated and a statistically significant sample of the aggregate installations will be subject to on-site inspection in accordance with the protocol set out for the projects. Inspection shall occur within 30 days of notification of measure installation to ensure that measures are installed and capable of performing their intended function. The energy efficiency service provider shall not receive final compensation until the customer documents work completion and the utility has conducted its inspection on the sample of installations.

(A) An energy efficiency service provider shall not be penalized for the inspection failure rate of another energy efficiency service provider.

(B) An energy efficiency service provider with unsatisfactory inspection results shall be subject to further inspections.

(7) The sample size for on-site inspections may decrease over time for a contractor under a particular contract that has consistently yielded satisfactory inspection results.

(m) Independent measurement and verification (M&V) expert. An independent M&V expert shall be selected to verify energy and peak demand savings, including deemed savings, reported by energy efficiency service providers statewide for the calendar year 2002, and periodically thereafter as determined by the commission.

(1) The independent M&V expert shall be selected by the commission by competitive solicitation.

(2) The independent M&V expert shall be funded from the utilities' program administration budgets.

(3) The independent M&V expert shall perform:

(A) A verification of energy efficiency service providers' reported energy and peak demand savings, based on a statistically representative sample of completed projects;

(B) A limited process evaluation; and

(C) Any other task the commission deems necessary.

(4) By March 1, 2003, the independent M&V expert shall report its preliminary conclusions to the commission and make a recommendation whether the utilities' energy and peak demand savings should be adjusted. By March 2004, the independent M&V expert shall provide its full report.

(n) Energy efficiency implementation project. The commission shall initiate an implementation project to make recommendations to the commission for its consideration with regard to best practices in standard offer programs and market transformation programs. All orders approved by the commission under Project Number 22241, *Energy Efficiency Program Implementation Docket*, and that are consistent with this section shall be transferred to the energy efficiency implementation project. Material submitted to the commission in this project believed to contain proprietary or confidential information shall be identified as such, and the commission may enter an appropriate protective order. The following functions may be undertaken in the energy efficiency implementation project:

(1) Development and review of statewide standard offer programs.

(2) Identification, design, and review of market transformation programs.

(3) Development of the appropriate baseline for programs addressing new construction.

(4) Determination of measures for which deemed savings are appropriate and participation in the development of deemed savings estimates for those measures.

(5) Recommendation to the commission of one or more independent M&V expert to conduct the audit in accordance with subsection (m) of this section.

(6) Review of and recommendations on the independent M&V expert's report with respect to whether utilities will meet the minimum legislative goal by January 1, 2004, and annually thereafter.

(7) Review of and recommendations on incentive payment levels and the adequacy to induce the desired level of participation by the energy efficiency service providers and customer classes.

(8) Review of and recommendations on the utility annual energy efficiency reports with respect to whether all customer classes have access to energy efficiency programs.

(9) Periodic reviews of the cost effectiveness methodology.

(10) Development of information packets for potential residential and commercial customers.

(11) Other activities as requested by the commission.

(o) Customer protection. The customer protection provisions under this section shall apply to residential and small commercial customers only. Each energy efficiency service provider who provides energy efficiency services to the end-use utility customer shall provide:

(1) Clear disclosure to the customer of the following:

(A) The customer's right to a cooling-off period of three business days, in which the contract may be canceled, if applicable under law.

(B) The name, telephone number, and street address of the energy services provider, the contractor, and written disclosure of all warranties.

(C) The fact that incentives are made available to the energy efficiency services provider through a ratepayer funded program, manufacturers or other entities.

(D) Notice of provisions that will be included in the customer's contract as described in paragraph (3) of this subsection.

(2) A form developed and approved by the commission may be used to satisfy the requirements of paragraph (1) of this subsection

(3) Contractual provisions to be included:

(A) Information on work activities, completion dates, and the terms and conditions that protect residential customers in the event of non-performance by the energy efficiency service provider.

(B) Written and oral disclosure of the financial arrangement between the energy efficiency service provider and customer. This includes an explanation of the: total customer payments, the total expected interest charged, all possible penalties for non- payment, and whether the customer's installment sales agreement may be sold.

(C) Disclosure of contractor liability insurance to cover property damage.

(D) An "All Bills Paid" affidavit be given to the customer to protect against claims of subcontractors.

(E) Provisions prohibiting the waiver of consumer protection statutes, performance warranties, false claims of energy savings and reductions in energy costs.

(F) Information on complaint procedures offered by the contractor, or the utility, as required under subsection (j)(2)(L) of this section, and toll free numbers for the Office of Customer Protection of the Public Utility Commission of Texas, and the Office of Attorney General's Consumer Protection Hotline.

(G) Disclosure that the energy efficiency service provider is not part of, or endorsed by the commission or the utility.

(p) Effective date: This section shall be in effect for any energy efficiency programs pursuant to this section with a start date of January 1, 2003 and thereafter.

§25.182. Energy Efficiency Grant Program.

(a) Purpose. The purpose of this section is to provide implementation guidelines for the Energy Efficiency Grant Program mandated under the Health and Safety Code, Title 5, Subtitle C, Chapter 386, Subchapter E, Energy Efficiency Grant Program. Programs offered under the Energy Efficiency Grant Program shall utilize program templates that are consistent with §25.181 of this title (relating to the Energy Efficiency Goal). Programs shall include the retirement of materials and appliances that contribute to energy consumption during periods of peak demand with the goal of reducing energy consumption, peak loads, and associated emissions of air contaminants.

(b) Eligibility for grants. Electric utilities, electric cooperatives, and municipally owned utilities are eligible to apply for grants under the Energy Efficiency Grant Program. Multiple eligible entities may jointly apply for a grant under one energy efficiency grant program application. Grantees shall administer programs consistent with §25.181 of this title.

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

(1) Affected counties -- Bastrop, Bexar, Caldwell, Comal, Ellis, Gregg, Guadalupe, Harrison, Hays, Johnson, Kaufman, Nueces, Parker, Rockwall, Rusk, San Patricio, Smith, Travis, Upshur, Victoria, Williamson, and Wilson. An affected county may include a nonattainment area, at which point it will be considered a nonattainment area.

(2) Demand side management (DSM) -- Activities that affect the magnitude or timing of customer electrical usage, or both.

(3) Electric utility -- As defined in the Public Utility Regulatory Act (PURA) §31.002(6).

(4) Energy efficiency -- Programs that are aimed at reducing the rate at which electric energy is used by equipment and/or processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by consumer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at lower customer cost.

(5) Energy efficiency service provider -- A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or a large commercial customer, if the person has executed a standard offer contract with the grantee.

(6) Grantee -- the entity receiving energy efficiency grant program funds.

(7) Nonattainment area -- An area so designated under the federal Clean Air Act §107(d) (42 U.S.C. §7407), as amended. A nonattainment area does not include affected counties.

(8) Peak demand -- Electrical demand at the time of highest annual demand on the utility's system, measured in 15 minute intervals.

(9) Peak demand reduction -- Peak demand reduction on the utility system during the utility system's peak period for the duration of at least one hour, calculated as the maximum average demand reduction over a period of one hour during the peak period.

(10) Peak load -- Peak demand.

(11) Peak period -- Period during which a utility's system experiences its maximum demand. For the purposes of this section, the peak period is May 1 through September 30, during the hours between 1:00 p.m. and 7:00 p.m., excluding federal holidays and weekends.

(12) Retirement -- The disposal or recycling of all equipment and materials in such a manner that they will be permanently removed from the system with minimal environmental impact.

(d) Commission administration. The commission shall administer the Energy Efficiency Grant Program, including the review of grant applications, allocation of funds to grantees and monitoring of grantees. The commission shall:

(1) Develop an energy efficiency grant program application form. The grant application form shall include:

(A) Application guidelines;

(B) Information on available funds, including minimum and maximum funding levels available to individual applicants;

(C) Listing of applicable affected counties and counties designated as nonattainment areas; and

(D) Information on the evaluation criteria, including points awarded for each criterion.

(2) Evaluate and approve grant applications, consistent with subsection (e) of this section.

(3) Enter into a contract with the successful applicant.

(4) Reimburse participating grantees from the fund for costs incurred by the grantee in administering the energy efficiency grant program.

(5) Monitor grantee progress on an ongoing basis, including review of grantee reports provided under subsection (g)(8) of this section.

(6) Compile data provided in the annual energy efficiency report, pursuant to §25.183 of this title (relating to Reporting and Evaluation of Energy Efficiency Programs).

(e) Criteria for making grants.

(1) Grants shall be awarded on a competitive basis. Applicants will be evaluated on the minimum criteria established in subparagraphs (A)-(F) of this paragraph.

(A) The extent to which the proposal would reduce emissions of air pollutants in a nonattainment area.

(B) The extent to which the proposal would reduce emissions of air pollutants in an affected county.

(C) The amount of energy savings achieved during periods of peak demand.

(D) The extent to which the applicant has achieved verified peak demand reductions and verified energy savings under this or other similar energy efficiency programs and has complied with the requirements of the grant program established under this section.

(E) The extent to which the proposal is credible, internally consistent, and feasible and demonstrates the applicant's ability to administer the program.

(F) Any other criteria the commission deems necessary to evaluate grant proposals.

(2) Applicants who receive the most points under the evaluation criteria shall be awarded grants, subject to the following constraints:

(A) The commission reserves the right to set maximum or minimum grant amounts, or both.

(B) The commission reserves the right to negotiate final program details and grant awards with a successful applicant.

(f) Use of approved program templates. All programs funded through the energy efficiency grant program shall be program templates developed pursuant to §25.181 of this title.

(1) Program templates adopted under this program shall include the retirement of materials and appliances that contribute to energy consumption during periods of peak demand to ensure the reduction of energy, peak demand, and associated emissions of air contaminants.

(2) Cost effectiveness and avoided cost criteria shall be consistent with §25.181(e) of this title.

(3) Incentive levels shall be consistent with program templates and in accordance with §25.181(h)(2)(F) of this title.

(4) Inspection, measurement and verification requirements shall be consistent with program templates and in accordance with §25.181(l) of this title.

(5) Projects or measures under this program are not eligible for incentive payments or compensation if:

(A) A project would achieve demand reduction by eliminating an existing function, shutting down a facility, or operation, or would result in building vacancies, or the re- location of existing operations to locations outside of the facility or area served by the participating utility.

(B) A measure would be installed even in the absence of the energy efficiency service provider's proposed energy efficiency project. For example, a project to install measures that have wide market penetration would not be eligible.

(C) A project results in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.

(D) The project involves the installation of self-generation or cogeneration equipment, except for renewable demand side management technologies.

(g) Grantee administration: The cost of administration may not exceed 10% of the total program budget before January 1, 2003, and may not exceed 5.0% of the total program budget thereafter. The commission reserves the right to lower the allowable cost of administration in the application guidelines.

(1) Administrative costs include costs necessary for grantee conducted inspections and the costs necessary to meet the following requirements:

(A) Conduct informational activities designed to explain the program to energy efficiency service providers and vendors.

(B) Review and select proposals for energy efficiency projects in accordance with the program template guidelines and applicable rules of the standard offer programs under §25.181(j) of this title, and market transformation programs under §25.181(k) of this title.

(C) Inspect projects to verify that measures were installed and are capable of performing their intended function, as required in §25.181(l) of this title, before final payment is made. Such inspections shall comply with PURA §39.157 and §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates) or, to the extent applicable to a grantee, §25.275 of this title (relating to the Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities).

(D) Review and approve energy efficiency service providers' savings monitoring reports.

(2) A grantee administering a grant under this program shall not be involved in directly providing customers any energy efficiency services, including any technical assistance for the selection of energy efficiency services or technologies, unless the customer is a large commercial customer and the activities are limited to the outreach activities outlined in paragraph (1)(A) of this subsection, or unless a petition for waiver has been granted by the commission pursuant to §25.343 of this title (relating to Competitive Energy Services), to the extent that section is applicable to a grantee.

(3) Only projects installed within the grantee's service area are eligible for compensation under this program.

(4) An electric utility may not count the energy and demand savings achieved under the energy efficiency grant program towards satisfying the requirements of PURA §39.905.

(5) Incentives paid for energy and demand savings under the energy efficiency grant program may not supplement or increase incentives made for the same energy and demand savings under programs pursuant to PURA §39.905.

(6) An electric utility, electric cooperative or municipally owned utility may not count air contaminant emissions reductions achieved under the energy efficiency grant program towards satisfying an obligation to reduce air contaminant emissions under state or federal law or a state or federal regulatory program.

(7) The grantee shall compensate energy efficiency service providers for energy efficiency projects in accordance with the applicable rules of the standard offer programs under §25.181(j) of this title, and market transformation programs under §25.181(k) of this title, and the requirements of this section.

(8) The grantee shall provide reports consistent with contract requirements and §25.183 of this title.

(h) Effective date: This section shall be in effect for any energy efficiency programs pursuant to this section with a start date of January 1, 2003 and thereafter.

§25.183. Reporting and Evaluation of Energy Efficiency Programs.

(a) Purpose. The purpose of this section is to establish reporting requirements sufficient for the commission, in cooperation with Energy Systems Laboratory of Texas A&M University (Laboratory), to quantify, by county, the reductions in energy consumption, peak demand and associated emissions of air contaminants achieved from the programs implemented under §25.181 of this title (relating to the Energy Efficiency Goal) and §25.182 of this title (relating to Energy Efficiency Grant Program).

(b) Application. This section applies to electric utilities administering energy efficiency programs implemented under the Public Utility Regulatory Act (PURA) §39.905 and pursuant to §25.181 of this title, and grantees administering energy efficiency grants implemented under Health and Safety Code §§386.201-386.205 and pursuant to §25.182 of this title, and independent system operators (ISO) and regional transmission organizations (RTO).

(c) Definitions. The words and terms in §25.182(c) of this title shall apply to this section, unless the context clearly indicates otherwise.

(d) Reporting. Each electric utility and grantee shall file by April 1, of each program year an annual energy efficiency report. The annual energy efficiency report shall include the information required under §25.181(h)(4) of this title and paragraphs (1) - (5) of this subsection in a format prescribed by the commission.

(1) Load data within the applicable service area. If such information is available from an ISO or RTO in the power region in which the electric utility or grantee operates, then the ISO or RTO shall provide this information to the commission instead of the electric utility or grantee.

(2) The reduction in peak demand attributable to energy efficiency programs implemented under §25.181 and §25.182 of this title, in kW by county, by type of program and by funding source.

(3) The reduction in energy consumption attributable to energy efficiency programs implemented under §25.181 and §25.182 of this title, in kWh by county, by type of program and by funding source.

(4) Any data to be provided under this section that is proprietary in nature shall be filed in accordance with §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials.

(5) Any other information determined by the commission to be necessary to quantify the air contaminant emission reductions.

(e) Evaluation.

(1) Annually the commission, in cooperation with the Laboratory, shall provide the Texas Commission on Environmental Quality (TCEQ) a report, by county, that compiles the data provided by the utilities and grantees affected by this section and quantifies the reductions of energy consumption, peak demand and associated air contaminant emissions.

(A) The Laboratory shall ensure that all data that is proprietary in nature is protected from disclosure.

(B) The commission and the Laboratory shall ensure that the report does not provide information that would allow market participants to gain a competitive advantage.

(2) Every two years, the commission, in cooperation with the Energy Efficiency Implementation Project shall evaluate the Energy Efficiency Grant Program under §25.182 of this title.

(f) Effective date: This section shall be in effect for any energy efficiency programs pursuant to this section with a start date of January 1, 2003 and thereafter.

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 October 3, 2002.

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Rhonda Dempsey
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Public Utility Commission of Texas
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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS
SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §26.130

The Public Utility Commission of Texas (commission) adopts an amendment to §26.130, relating to Selection of Telecommunications Utilities, with changes to the proposed text as published in the July 26, 2002 *Texas Register* (27 TexReg 6606). The amendment addresses carrier responsibility during the change order process when a customer selects a different local service provider (LSP) or primary interexchange carrier (PIC). Specifically, the amendment requires an old PIC to discontinue billing and requires the new PIC to initiate billing upon a change of PIC. In addition, the amendment clarifies how the LSPs exchange information about the change of provider(s) with other LSPs and PICs. The purpose of the amendment is to protect customers from billing errors arising from a PIC failing to discontinue billing for presubscribed services after a customer requests a change in the PIC, or from a PIC terminating the presubscribed service calling plan when the customer requests a change in LSP but no change in PIC. This section is adopted under Project Number 26131.

The commission received comments on the proposed amendment from Americatel Corporation (Americatel); VarTec Telecom, Inc., Excel Communications, Inc. and eMeritus Communications, Inc. (collectively "VarTec"); Sprint Communications Company LP, United Telephone Company of Texas, Inc. d/b/a Sprint and Central Telephone Company of Texas d/b/a Sprint (collectively "Sprint"); the Office of the Attorney General of Texas (OAG); Sage Telecom of Texas, LP (Sage); Birch Telecom, Ltd., LLP (Birch); Office of Public Utility Counsel (OPC); Southwestern Bell Telephone L.P., doing business as Southwestern Bell Telephone Company (SWBT); Verizon Southwest (Verizon); AT&T Communications of Texas, LP (AT&T); Texas State Telephone Cooperative, Inc. (TSTCI); and the Alliance for Telecommunications Industry Solutions (ATIS).

A public hearing on the amendment was held at commission offices on August 22, 2002 at 9:30 a.m. Representatives from Sprint; OAG; Sage; Birch; OPC; SWBT; Verizon; AT&T and TSTCI attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

Specific comments to rule language.

§26.130(m)(1), Definitions.

Section 26.130(m)(1) defines terms used in subsection (m). Verizon and SWBT proposed language to revise the rule's terminology for local exchange carrier (LEC), which would include the terms competitive local exchange carrier (CLEC) and incumbent local exchange carrier (ILEC). Verizon and SWBT proposed changing "local exchange company" to "local service provider" (LSP) in order to remain consistent with the commission's Draft *CLEC-To-CLEC and CLEC-TO-ILEC Migration Guidelines*, issued July 29, 2002 in Project Number 24389, as that project and this rulemaking address issues that arise in CLEC to CLEC and CLEC to ILEC customer migrations.

The commission agrees with Verizon and SWBT that industry-standard terminology should be used to the extent possible in order to avoid unnecessary confusion, and amends proposed subsection (m)(1)(A)-(C) to replace "LEC" with "LSP."

§26.130(m)(1)(D)

Section 26.130(m)(1)(D) defines preferred interexchange carrier. AT&T recommended that the commission use existing industry-standard terms in this rule to the extent possible, and suggested revising the proposed rule language to use the term "primary interexchange carrier," which is also defined in §26.5(158) of this title (relating to Definitions) rather than "preferred interexchange carrier." In addition, Verizon and SWBT proposed language to clarify that the PIC definition encompasses both interLATA and intraLATA toll carriers.

The commission agrees with AT&T that industry-standard terminology should be used to the extent possible in order to avoid unnecessary confusion, and amends proposed subsection (m)(1)(D)-(F) to use "primary" rather than "preferred." The commission agrees with Verizon and SWBT that the PIC definition set forth in subsection (m)(1)(D) include both interLATA and intraLATA toll carriers, and modifies this section accordingly.

§26.130(m)(2)(A), Contents and delivery of notice required by paragraphs (3) and (4) of this subsection

Section 26.130(m)(2)(A) specifies the contents of the notices provided by the LSPs. AT&T suggested including in the minimum list of notice requirements the following data elements: Customer Type Indicator; Carrier Identification Code; Jurisdictional Indicator - identifying whether the PIC is interLATA or intraLATA; and Service Address - to enable determination of applicable taxes/fees. AT&T stated that these elements are necessary for a carrier to effectively execute the installation or removal of an end user from its PIC and billings.

§26.130(m)(2)(C) as proposed, §26.130(m)(2)(A)(iii) as adopted

Proposed §26.130(m)(2)(C), adopted as §26.130(m)(2)(A)(iii), requires that notices contain "any other information necessary to execute the preferred carrier change request." AT&T stated that it believes that this "catch-all" phrase is intended to require the timely transmission during the interim of all minimum customer account information an interexchange carrier (IXC) may reasonably need, as reflected in the industry standard guidelines for a particular transaction. AT&T requested that the commission confirm this interpretation.

The commission agrees with AT&T that all information necessary to implement a change should be transmitted between carriers. However, the commission declines to specify additional detailed information in the rule because different companies' transactions may necessitate different minimum information.

§26.130(m)(3), Notification requirements for change in PIC only

Proposed §26.130(m)(3) requires the LSP to notify the old and new PIC of the PIC change within five business days of executing the change and requires the old and new PICs to discontinue and initiate billing respectively within five business days of receiving notice.

Birch and the OAG requested clarification of the term "executing the change." The OAG suggested amending subsection (m)(3) to clarify that "executing the change" occurs in the switch. Similarly, OPC commented about the need to clarify what event starts the five day period for the LSP to notify the old PIC.

The commission agrees with the parties and adopts amended language in subsection (m)(3)(A) to clarify that the "change execution" triggers the notice timelines. In addition, the commission defines "change execution" in new subsection (m)(1)(G).

SWBT stated that the rule should make clear that carriers can recover costs associated with providing notification under subsection (m)(3). Verizon and SWBT proposed language to reflect that carriers be allowed to "apply its applicable contract or tariff rates." At the Public Hearing, AT&T opposed this proposal to include language to assess fees per agreements or tariffs. AT&T stated that inclusion of such language would be a material deviation from what was published, and would require the commission to republish the rule for comment. In addition, AT&T contended that such notice fees are already governed by existing agreements, separate and apart from the rule, and in the long term should be viewed as part of the cost of doing business.

The commission does not believe a need exists to specify that carriers may recover their costs because the rule does not prohibit carriers from recovering costs associated with the notification and because existing agreements may already address applicable fees. The commission recognizes that tariffs and/or other arrangements may be in place between carriers and the commission does not intend for this rule to modify them.

Sprint stated that its long distance division believes that the proposed rule has the potential to enhance its ability to collect toll usage from consumers only if all CLECs and ILECs participate in the notification process. Sprint stated that its local telephone division cannot comply with the five day requirement as their current process takes 14 calendar days, and that the five day mandate would require Sprint's local telephone division to enhance its systems at an estimated cost of $280,000 that would take at least 90 days to complete. Therefore, Sprint suggested that the rule be revised to reflect a 14 calendar day requirement instead of a five business day notification requirement. During the hearing, Sprint explained that its 14 day notice process and associated cost concerns pertain only to the notification of a change in PIC. In supplemental comments filed after the hearing, Sprint clarified that it intends to migrate to a five day notification period. However, both Sprint and AT&T recommended that the commission allow providers time to implement process changes required by the new rule. During the hearing, AT&T suggested that the rule be effective 90 days after publication or January 1, 2003.

The commission agrees with AT&T and Sprint that it is reasonable to allow parties additional time to implement the notice exchange process. Therefore, compliance with subsection (m) will be required by January 1, 2003. New paragraph (7) specifies this compliance date.

AT&T and TSTCI expressed concern that LSPs would not be able to contact an IXC or agent with whom there is no previously established relationship within the required timeframe. TSTCI stated that, given the past experience of small ILEC business office managers, it would be difficult, if not impossible, for a small ILEC to comply with the proposed five business day notification requirement. During the hearing, TSTCI clarified that the small ILECs need help in obtaining IXC contact information in order to comply with the rule, and are seeking a more streamlined process for getting information to the IXC. TSTCI explained that it has used the commission's utility directory database on the commission's website to obtain IXC contact information, however problems arise during the process of communicating the PIC change with the IXC itself.

To address AT&T and TSTCI's concerns, the commission adopts new subsection (m)(2)(B), which allows an LSP to comply with its notification obligation by delivering notice to the PIC using publicly available contact information maintained by the commission, if the LSP does not otherwise have a business relationship with that PIC enabling the LSP to have the necessary contact information.

§26.130(m)(3)(A) and (B)

Section 26.130(m)(3)(A) and (B) as proposed required the new PIC to connect service and the old PIC to disconnect service. AT&T explained that IXCs do not either connect or disconnect service, but instead initiate or terminate billing, and proposed that proposed subsection (m)(3) be revised to reflect this. AT&T proposed revisions to comport with its practice of initiating billing for presubscribed services, and to delete language referring to service connection. AT&T proposed revisions to comport with its practice of discontinuing billing for presubscribed services and continued billing for transactional usage, and to delete language referring to service disconnection.

Similarly, VarTec proposed that subsection (m)(3)(B) be reworded to clarify the commission's intent. VarTec noted that the PIC is maintained at the LEC switch and that the PIC and the term "disconnect service" would require the IXC to block traffic to the customer. In addition, VarTec commented that since the PIC change occurs in the switch, the old PIC does not need to take any action to "disconnect service," since future 1+ calls should be routed to the new PIC. Furthermore, VarTec stated that the amendment assumes that the customer intends to stop using all services of the old PIC. VarTec emphasized that requiring the old PIC to disconnect could cause unintended interruption of service. VarTec suggested removing the requirement to "disconnect service." For reasons similar as above, VarTec held that the old PIC should not be required to stop billing upon selection of a new PIC. VarTec stated that the requirement to discontinue billing should be clarified or removed.

The commission agrees with AT&T and VarTec that the PIC's action should be characterized as initiating billing or discontinuing billing for presubscribed services. Therefore, the commission amends proposed subsection (m)(3)(A)-(B) accordingly.

§26.130 (m)(4), Notification requirements for change in PLEC when one PLEC is not switched based, as proposed.

For a change in LSP where one of the LSPs is not switch-based, subsection (m)(4) as proposed required the:

(A) new LSP to notify old LSP of change in LSP and identity of new PIC within five business days of LSP selection;

(B) new LSP to notify new PIC of PIC selection within five business days of receiving notice; and

(C) old LSP to notify old PIC of change in LSP, identity of new LSP, and whether old PIC service has been unsubscribed within five business days of receiving notice.

AT&T , Verizon and SWBT proposed that the commission delete subsection (m)(4) and adopt subsection (m)(5), relating to notification requirements for changes in facilities-based LSPs, with revisions. Verizon and SWBT stated that the commission should adopt one rule that applies to all LECs, whether they are switch-based or not. According to SWBT, because LECs might be switch-based in one exchange but not another, different rules would require LECs to maintain information on what LEC is switch-based, and where, increasing the potential for confusion and mistakes in complying with the rule. SWBT stated that for the proposed rule language to be effective, the commission would need to implement an additional rule requiring all LECs to inform all other LECs whether the service they provide is switch-based or switchless in every Texas exchange. SWBT claimed that some LECs, including SWBT, would be unable to comply with the proposed subsection (m)(4) absent extensive redesign of their systems. Such a redesign would delay the time in which the rule could be implemented, and require those LECs to incur substantial costs with no benefit to the customer.

The commission agrees with the parties that separate processes are not needed for switch-based and switchless LSPs. Therefore, the commission deletes subsection (m)(4) as proposed.

Timing and execution in subsection (m)(4), as proposed.

VarTec, Sage and AT&T commented on potential timing problems with using LSP selection as the triggering event for providing notification. Sage and AT&T commented that the triggering event for the timing of notifications should be clarified. VarTec proposed that timing requirements be based on the execution of the change instead of selection of a new provider. Sage recommended that the trigger for notifications should be the date the old LSP receives the disconnect order. In addition, Sage suggested adjusting timelines if notification takes longer than five days (from the selection of the new LSP). AT&T recommended that the timing for the obligation of the LEC to provide notice should be keyed off of the date the LEC either completed the underlying provisioning and related activities in the serving switch, or the date the LEC received notice of the completion of such activities from the network service provider that operates the serving switch.

The commission addresses these issues in the discussion of subsection (m)(5) as proposed, (m)(4) as adopted.

Notification between LSPs in subsection (m)(4), as proposed.

AT&T contended that the rule should only govern the transmission of information between LECs and IXCs given the complex and various CLEC to CLEC transition scenarios. AT&T stated that LEC to LEC notice requirements are governed by the CLEC to CLEC Migration guidelines in Project Number 24389 and/or by the Local Service Ordering Guidelines (LSOG) requirements that have generally been incorporated into the interconnection arrangements between ILECs and CLECs. During the hearing, AT&T clarified its concern that the rule's notice requirements may be duplicative of requirements in the LEC to LEC migration guidelines in Project Number 24389. In addition, AT&T expressed concern that, in a customer migration scenario where both LECs are unbundled network element platform (UNE-P) providers, the notice is issued by the network service provider that executes the change in the switch, and not the UNE-P providers. AT&T stated that for UNE-P providers, the separate requirement that the LECs notify each other may result in the network service provider asserting that there are payment obligations not otherwise required by the interconnection agreements.

The commission deletes subsection (m)(4) as proposed. AT&T also raised similar concerns in the comments to subsection (m)(5) as proposed. The commission addresses AT&T 's comments in the discussion on that subsection.

Requiring the new LSP to provide all notifications in subsection (m)(4) as proposed.

VarTec stated that having both proposed subsection (m)(4)(C) and (m)(5)(C) would require two separate notification procedures - one for acquiring customers and one for migrating customer to another service provider. VarTec commented that proposed subsection (m)(4)(C) unnecessarily requires LECs to duplicate existing industry procedures. Instead, VarTec suggested that the new LSP provide all of the proposed notifications. AT&T disagreed with VarTec's suggestion that the new LSP provide notice to all IXCs. According to AT&T , this is not consistent with current industry practice and suggested retaining the approach provided by the rule.

The parties raised similar concerns with regard to subsection (m)(5) as proposed. The commission addresses the parties' comments in the discussions on that subsection.

SWBT stated that proposed subsection (m)(4)(A)(ii) should be deleted, as the old LSP does not need this information for billing or any other purpose. Verizon also proposed deleting this requirement. SWBT stated that, because the old LSP has no need for this information, its disclosure violates the prohibitions against disclosure of customer proprietary network information ("CPNI"). Moreover, this provision is unnecessary because the proposed rule also requires the new LSP to inform the new PIC that it has been selected to provide long distance services to the customer within five business days of the customer's request. SWBT claimed that having both the old and new LSP notify the PIC at potentially different times would add confusion and further increase the risk of inaccurate billing.

SWBT stated that proposed subsection (m)(4)(C)(ii) should be deleted because it is unnecessary. According to SWBT, knowing the identity of the new LSP is not necessary to inform the old PIC whether it remains the customer's PIC or not. The new PIC is specifically informed that it is the customer's new PIC by the new LSP under subsection (m)(4)(B). In addition, it raises potential CPNI problems, because if the customer does not maintain the old PIC as its PIC, the old PIC has information that is not used in the provision of telecommunications services potentially in violation of 47 U.S.C. §222.

AT&T stated that proposed subsection (m)(4)(c)(ii)-(iii) is unnecessary, inconsistent with Ordering and Billing Forum (OBF) Subscription Committee industry standards, and could cause customer confusion and inconvenience.

SWBT recommended that proposed subsection (m)(4)(C)(iii) be deleted because it is unnecessary and would be extremely difficult for some carriers to implement. SWBT suggested that instead, the commission adopt present industry standards that simply require the new LSP to notify the new PIC. In addition, SWBT stated that the most cost effective and expedient method is to require all carriers to comply with the present OBF guidelines.

As stated earlier, the commission deletes subsection (m)(4) as proposed, therefore comments regarding deletion of subdivisions of subsection (m)(4) do not need to be addressed.

§26.130(m)(5) as proposed, §26.130(m)(4) as adopted.

For a change in LSP where both the old and new LSPs are switch-based, subsection (m)(5) as proposed (subsection (m)(4) as adopted) requires the:

(A) new LSP to notify old LSP of change in LSP within five business days of LSP selection;

(B) new LSP to notify new PIC of PIC selection within five business days of receiving notice; and

(C) old LSP to notify old PIC of PIC unsubscription within five business days of receiving notice.

SWBT stated that this proposed rule mirrors OBF guidelines, is consistent with industry standards and current practice, and implementation could be accomplished quickly. SWBT maintained that, in exchanging billing record information, it is irrelevant whether an old or new LSP is switch-based, because exchanging billing recording information does not involve the actual PIC change, but how information is transmitted between old and new carriers. SWBT stated that the proposed rule allows for the exchange of all information necessary for PICs to accurately bill the customer. SWBT stated that this proposed rule language does not raise CPNI concerns, because the party with a legitimate need to share the information does so. Therefore, SWBT and Verizon recommended that the commission adopt proposed subsection (m)(5), with modifications, for all migrations, regardless of whether or not the new or old LSP is switch-based. SWBT and Verizon proposed modifications throughout the section to reflect the use of the term "LSP" instead of "PLEC," and to reflect the deletion of proposed subsection (m)(4).

The commission agrees with the parties that for the purposes of clarity and simplicity, and in order to most effectively clarify carrier responsibility during the records exchange process, one rule should apply to all carriers regardless of facilities ownership. Therefore, the commission merges proposed subsection (m)(4)-(5) into the new subsection (m)(4), which applies to all carriers, regardless of facilities ownership. The commission also agrees that the term "LSP" should replace "PLEC."

Deletion of subsection (m)(4) and (5) as proposed.

Birch recommended deleting subsection (m)(4) and (5) as proposed because they duplicate existing efforts. Although, if the commission implements subsection (m)(4), Birch suggested that the ILEC should provide notification of the change of LSP and that the new LSP should notify the new PIC and the old LSP should notify the old PIC. Birch further suggested that the ILEC could develop an unbundled network element (UNE) based Customer Account Record Exchange (CARE) offering whereby the ILEC provides the notifications on the CLEC's behalf. With respect to non-ported changes in LSPs, Birch recommended that the commission consult industry standards groups such as the CLEC User Forum and the OBF. Birch stated that normal order activity creates awareness between the old and new LECs. However, at the public hearing, Birch explained that its comments assumed that the amendment would require a new notification procedure in addition to any existing procedure that may already provide the required notices. Accordingly, Birch expressed that it concurred with the amendment, so long as Birch did not have to provide a notice in addition to its existing procedures. Birch further stated that it had no preference between subsection (m)(4) and (m)(5).

The commission notes that proposed subsection (m) would not require duplication of existing efforts. The commission declines to require the ILEC to provide notice of a change of LEC since this would conflict with industry standards. Subsection (m) in no way requires an LSP to use a specific notification method, such as CARE, or prohibits a carrier from arranging with another carrier to provide notices on its behalf. If an LSP already makes the required notifications, the LSP does not have to initiate another process. However, the commission believes in using a standardized process, and strongly encourages carriers in Texas to use a single standard.

Timing and execution in subsection (m)(5) as proposed, subsection (m)(4) as adopted.

VarTec noted that timing requirements were inconsistent between a PIC only change and changes of both PIC and LSP. VarTec stated that events occurring after LSP selection, but before order completion could change the content of the required notice. Furthermore, complex orders may require more than five business days for completion. VarTec, SWBT and Verizon suggested that timing requirements be based on the execution of the change instead of selection of a new provider. In addition, AT&T stated that the LEC to IXC notice obligations should commence upon completion of the provisioning and related work in the switch, or, where the LEC is not the switch provider, upon its receipt of notice that such activities have been completed.

The commission understands VarTec, SWBT and Verizon's concern that compliance with the rule could be difficult because of complications of providing notification from the date of carrier selection. Therefore, as stated previously, the commission concurs with the parties that the notice timelines should be triggered by the date of the execution of the change in the switch, and adopts amended language in subsection (m)(5)(A)-(B) as proposed, (m)(4)(A)-(B) as adopted, to clarify that the "change execution" triggers the notice timelines.

AT&T contended that the event starting the timeline by which a LEC must provide notice to an IXC should be clarified to ensure that notice is required only after the change in carriers has been completed in the switch serving the end user and the serving LEC has received notice of same. According to AT&T, changes in service are generally implemented at the local switch serving the end user customer, and only the switch provider will know with certainty when a change is executed. Therefore, AT&T recommended that the timing for the obligation of the LEC to provide notice should be keyed off of the date the LEC either completed the underlying provisioning and related activities in the serving switch, or the date the LEC received notice of the completion of such activities from the network service provider that operates the serving switch.

The commission agrees that the notice timelines should be triggered by the date of the execution of the change in the switch, and adopts amended language in subsection (m)(5)(A)-(B) as proposed, subsection (m)(4)(A)-(B) as adopted, to clarify that the "change execution" triggers the notice timelines. In addition, the commission defines "change execution" in new subsection (m)(1)(G) to address timing differences between switch-based and switchless LSPs. Defining "change execution" as the date the LSP has knowledge of the change accommodates both

switch-based and switchless LSPs. Notice timelines would start on the date of the change for switch-based LSPs and on the date of receiving notice of the change for switchless LSPs.

Notification between LSPs in subsection (m)(5) as proposed, subsection (m)(4) as adopted.

AT&T contended that the rule should only govern the transmission of information between LECs and IXCs given the complex and various CLEC to CLEC transition scenarios. However, AT&T proposed rule language to require the old LSP to act on notification to the old PIC upon receipt of notice pursuant to the migration guidelines established in Project Number 24389 or "other mechanisms implemented to ensure notice." AT&T stated that LEC to LEC notice requirements are governed by the CLEC to CLEC Migration guidelines in Project Number 24389 and/or by the LSOG requirements that have generally been incorporated into the interconnection arrangements between ILECs and CLECs. During the hearing, AT&T clarified its concern that the rule's notice requirements may be duplicative of requirements in the LEC to LEC migration guidelines in Project Number 24389. In addition, AT&T expressed concern that, in a customer migration scenario where both LECs are UNE-P providers, the notice is issued by the network service provider that executes the change in the switch, and not the UNE-P providers. AT&T stated that for UNE-P providers, the separate requirement that the LECs notify each another may result in the network service provider asserting that there are payment obligations not otherwise required by the interconnection agreements.

The commission agrees that the rule should avoid creating a new or duplicative records exchange process. The commission only requires that LSPs provide certain minimum information to other carriers. Subsection (m) in no way requires an LSP to use a specific notification method (such as CARE) or prohibits a carrier from arranging with another carrier to provide the notices on its behalf. Therefore, if an LSP already provides any of the subsection (m) notifications (pursuant to an existing guideline or otherwise), then the LSP has met the requirements for those notifications and need not create a duplicate or new process to provide those notifications again. In addition, the commission recognizes that such notification may currently occur pursuant to existing agreements between carriers and the commission does not intend for the rule to modify those agreements or create additional requirements if such notice currently occurs. However, the commission believes in using a standardized process, and strongly encourages carriers in Texas to use a single standard.

Requiring the new LSP to provide all notifications in subsection (m)(5) as proposed, subsection (m)(4) as adopted.

VarTec stated that proposed subsection (m)(5)(C) would require two separate notification procedures - one for acquiring customers and one for migrating customer to another service provider. VarTec commented that subsection (m)(5)(C) unnecessarily requires LECs to duplicate existing industry procedures. Instead, VarTec suggested that the new LSP provide all of the proposed notifications. AT&T disagreed with VarTec's suggestion that the new LSP provide notice to all IXCs. According to AT&T , this is not consistent with current industry practice, and AT&T suggested remaining with the approach provided by the rule.

The commission disagrees that the rule should be revised to require the new LSP to provide all notifications, as this is not consistent with current industry practices. Instead, the commission agrees with AT&T and retains the published rule language.

§26.130(m)(6) as proposed, §26.130(m)(5) as adopted

Section 26.130(m)(6) as proposed, §26.130(m)(5) as adopted, requires a new PIC to initiate billing. As proposed, subsection (m)(6) also required the new PIC to connect service.

Birch supported subsection (m)(6) as proposed. AT&T stated that IXCs neither connect or disconnect service, but rather initiate or terminate billing, and proposed revisions to the rule accordingly.

The commission agrees with AT&T that it is more appropriate to describe the PIC's actions as an initiation of billing for presubscribed services. Therefore, the commission amends proposed subsection (m)(6) as proposed, subsection (m)(5) as adopted, accordingly.

§26.130(m)(7) as proposed, §26.130(m)(6) as adopted.

Section 26.130(m)(7) as proposed, §26.130(m)(6) as adopted, requires the old PIC to discontinue billing after:

(A) the old PIC receives notice of unsubscription from the PIC

(B) the old PIC receives notice of a change in switch-based LSPs, but does not receive notice of its selection as the new PIC.

As proposed, subsection (m)(7) required the PIC to disconnect service.

VarTec suggested removing the requirement to "disconnect service." AT&T stated that IXCs neither connect or disconnect service, but rather initiate or terminate billing, and proposed revisions to the rule accordingly.

The commission agrees with VarTec and AT&T that it is more appropriate to describe the PIC action in this instance as discontinuing billing, specifically for presubscribed services, and amends subsection (m)(7) as proposed, subsection (m)(6) as adopted, accordingly.

VarTec stated that the old PIC should not be required to stop billing upon selection of a new PIC because no "1+" calls would be routed to the old PIC's service for billing. VarTec stated that the requirement to discontinue billing should be clarified or removed, because a customer could still use VarTec to make dial-around long distance calls and under that circumstance, it would be appropriate for VarTec to bill the customer.

The commission agrees with VarTec that the old PIC should not be required to stop billing for non-presubscribed services. Although routing of "1+" calls to the new PIC after a PIC change execution prevents the old PIC from assessing measured use charges, this does not prevent old PICs from charging monthly recurring fees. Accordingly, the commission clarifies that the old PIC must discontinue billing for presubscribed services, but may bill the customer for dial-around type calls or other services that the customer orders and uses.

Sage noted that conversion may take longer than ten days, but subsection (m)(7) as proposed, subsection (m)(6) as adopted, requires disconnection within five business days. Therefore, Sage recommended that the disconnection date be contingent upon the actual conversion date rather than upon notice of the change execution.

The commission agrees that the "disconnection" date should be modified. Therefore, the commission changes the triggering event from the customer's selection of the new PIC to the change execution or conversion date.

AT&T proposed revisions to reflect current industry practices, where the old IXC receives direct notification that the LEC has changed, but gets no direct notice from the old LEC as to the status of the PIC. According to AT&T , under OBF standards and its current company practices, the old IXC is directed to assume that, if it has not been notified that it is the new IXC within a reasonable period of time after the notice of change in LECs, it is no longer the IXC and it is to discontinue billing for presubscribed services effective as of the date of the switch. AT&T explained that in all cases, the old IXC does not discontinue billing within five business days because of billing cycle issues. AT&T stated that its experience has been that it is reasonable to wait for 30 days before ceasing the bill process. AT&T requested that the rule or the preamble allow this practice to continue.

The commission understands AT&T 's concern that the billing cycle may not complete until 30 days after the customer has changed PIC providers. However, the commission believes that amendments to subsection (m)(2)-(3) as proposed and subsection (m)(5) as proposed, (m)(4) as adopted, which require that notice be delivered contingent upon the conversion date in the switch, address the concern that more than five business days may be necessary. The rule as amended requires that the PIC cease billing the end user for presubscribed services as of the date the PIC change is made in the LEC switch. The old PIC must still submit the final bill for presubscribed services that the customer had ordered before the PIC change. The rule does not specify the timeframe in which the old PIC's billing cycle completes for the customer's final bill, but the customer should not incur charges for presubscribed services from the old PIC after the date the PIC change execution in the switch. However, the commission believes that to avoid prematurely discontinuing billing for a service the customer wishes to keep, the timeframe for the old PIC to implement the change in their billing system should be extended from five to seven business days, and amends the rule accordingly.

Verizon contended that the commission does not need to prescribe a time frame for the old PIC to disconnect service, and therefore the proposed subsection is not necessary. Verizon stated that it believes that the cause of the problem of customers facing continued billing from PICs is lack of notice to the PIC, or a failure of the old PIC to respond to the notice. Verizon maintained that if a time frame for old PIC disconnects is necessary, it should be developed by an industry forum such as the OBF. According to Verizon, current OBF guidelines that require the former PIC to disconnect a customer if it does not receive confirmation that it is the new PIC address this issue.

The commission disagrees with Verizon that it is unnecessary to set a time frame for the old PIC to discontinue billing the customer. The commission believes that this requirement is necessary to clarify carrier responsibility when discontinuing billing, and affords greater customer protection against continued billing for services that the customer cancelled.

Other rule related issues.

Five day maximum for carrier changes.

The OAG recommended emphasizing that five business days is the maximum time allowed for making the carrier changes. The OAG suggested this could be accomplished by adding the phrase "a maximum of" before each instance of "five business days."

The commission finds that the current language already clearly states that the time limits specified in subsection (m) are mandatory. Therefore, the commission finds no need to include additional "maximum" language.

Use of current process.

Sage commented that it would prefer to maintain the processes it currently uses as much as possible.

The commission notes that subsection (m) does not require a carrier to duplicate an existing process for the purpose of complying with subsection (m). To the extent that a carrier's existing processes comply with subsection (m), the carrier has already satisfied its obligations under subsection (m). Moreover, the commission based the subsection (m) requirements on existing industry standards, which should minimize a carrier's need to change its processes.

Double billing and enforcement.

OPC commented that the proposed rule authorizes the old PIC to bill for two calendar weeks beyond the earliest date the new PIC can bill the customer, resulting in double billing. OPC also expressed that enforcement language should be included. At the public hearing, OPC suggested adding an additional paragraph specifying that failure to discontinue billing as required in subsection (m) constitutes an unauthorized charge under Substantive Rule §26.32(f) of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

AT&T objected to OPC's proposal to include language in the proposed rule that would impose administrative penalties on companies that failed to comply with the rule. AT&T stated that inclusion of such language would be a material deviation from what was published, and would require the commission to republish the rule for comment. In addition, AT&T maintained that such language is unnecessary because the commission has general penalty jurisdiction anyway. Regarding OPC's concerns that customers would be double-billed during the carrier transition, at the hearing, AT&T clarified that, if the commission adopted the switch execution date as the trigger for the notice exchange between carriers, then billing from the old PIC and billing from the new PIC would hinge on that switch change date.

SWBT stated that processes developed by the Ordering and Billing Forum and currently used by carriers such as SWBT provide for the timely transmission of information between carriers sufficient to protect customers from double billing.

The commission finds that proposed §26.130(m), along with existing provisions in the commission's rules, the Public Utility Regulatory Act (PURA), and industry standards, already address OPC's double billing concerns, making any additional changes unnecessary. First, proposed §26.130(m) does not allow both the new and old PICs to charge for presubscribed service during the same time. Proposed subsection (m)(2)(A) requires the change execution date to be included in the notices sent to the old and new PICs. As a result, both the new PIC and old PIC know the exact date from which they may or may not charge for presubscribed service. A customer may receive a bill from each PIC, but each bill should cover a partial month only. Therefore no double billing should occur. Second, §26.32(f) prohibits unauthorized charges. Accordingly, the commission agrees with AT&T and SWBT that sufficient protection exists to prevent double billing. In addition, the commission concurs with AT&T that proposed subsection (m) should not include any administrative

penalty language. The commission already has general authority to impose administrative penalties for a violation of its rules (PURA §15.023 and §15.024), and §26.130 contains an enforcement provision in subsection (h).

OBF and CARE.

ATIS' provided an overview of the OBF and its operation and described the CARE processes corresponding to the subsections of the proposed rule. ATIS also commented that a single standard on a particular issue is beneficial and more cost effective for companies, which also benefits consumers.

In this amendment, the commission requires that notice be given in compliance with the rule; however, the commission does not specifically require the use of CARE or any other method. The carriers have flexibility in implementing the rule. However, the commission believes in using a standardized process, and strongly encourages carriers in Texas to use a single standard.

Good faith exception.

AT&T stated that a small percentage of notice transactions should be permitted to occur outside the five day window, consistent with existing commission practice in §26.54(c) of this title (relating to Service Objectives And Performance Benchmarks). According to AT&T , it will not be possible to comply with the rules' five day notification timeframe 100% of the time, and therefore the commission should adopt rule language to reflect that. AT&T proposed rule language to clarify that the requirements of the rule are met if 95% of the transactions required by the rule are executed within the five business day window applicable to that particular transaction.

AT&T suggested that the commission should recognize that notice process required by the rule may not work as intended and should thereby recognize a "good faith" defense. AT&T proposed new §26.130(m)(8) to reflect incorporation of a good faith compliance exception, which would exempt the carrier from administrative penalties upon a finding that the PIC or LSP demonstrated that "it has, in good faith and diligence, implemented and is following processes designed to meet the requirements of this rule" but that a "bona fide error…led to non-compliance."

The commission agrees with AT&T that carriers may need an exception from administrative penalties under limited circumstances. The commission understands AT&T 's concerns that some cases may arise that render compliance with the five day notification timeframe difficult. Therefore, the commission adopts new subsection (m)(2)(B), which allows an LSP to comply with its notification obligation by delivering notice to the PIC using publicly available contact information maintained by the commission, if the LSP does not otherwise have the necessary contact information through a business relationship. Further, the commission notes that in assessing administrative penalties under this new subsection (m), it is appropriate to review each carrier's compliance on a case-by-case basis and among other factors, consider the number of complaints or errors compared to the number of transactions.

Comments regarding the cost of implementation.

Sprint stated that the five day mandate would require Sprint's local telephone division to enhance its systems at an estimated cost of $280,000 that would take at least 90 days to complete.

Birch noted that it would incur additional costs to provide notice upon each LEC conversion. Birch estimated its workload would increase by 400% to expand its notification capacity to provide notice to all IXCs. Birch estimated its costs would increase by over $100,000 annually, assuming retention of its current processes and based on the quantity of known IXCs currently interfacing with Birch.

AT&T stated that it has developed direct CARE relationships with approximately 42 other providers. AT&T expressed concern that the commission's own utility directory databases reflect about 1700 registered IXCs and 500 certificated CLECs in Texas. AT&T stated that the possible cost to the CLEC of providing the notice required under the rule may prove a barrier to efficient market entry by CLECs. In addition, AT&T stated that the rule should not infringe upon existing information exchange mechanisms established between the parties. During the hearing, AT&T clarified that the anticipated cost issue facing CLECs in the long run centers on transmitting information to the IXCs with whom they have not previously established a relationship under a short time frame. AT&T stated that the issue can be overcome, perhaps using a third party administrator (TPA), and urged the commission to investigate a broad-based industry solution.

With this rule, the commission, insofar as possible, seeks to mirror current industry practices as described by the parties to the proceeding. Therefore, although the commission understands parties' concerns, the commission believes that the rule does not create a new notification process requirement, but clarifies carrier responsibility in the records exchange process to protect customers from continued billing for services that the customer sought to cancel, an issue that gave rise to numerous and continued customer complaints. Therefore, to the extent carriers experience new costs to implement the rule, the commission believes that the public interest far outweighs the cost to the carriers; however, it is appropriate to investigate this issue in a subsequent proceeding.

Issues beyond the scope of this rulemaking.

Unbillable interexchange calls.

Americatel recommended that the commission promulgate a new rule to address the difficulty IXCs have with unbillable calls due to insufficient customer information. Specifically, Americatel requested that the commission require: (1) that any LEC that no longer serves a particular customer indicate, upon request, which other LEC currently serves the customer; and (2) that all LECs provide billing name and address service.

AT&T stated during the hearing that Americatel raised good points about the effect on dial-around providers. According to AT&T, dial around providers do rely on the underlying LEC to bill for them in many cases, as the LEC has the direct relationship with the end user. However, AT&T stated that there is no real way to resolve Americatel's concerns in the context of this proceeding, and the long-term resolution of the issue would involve an industry accessible line-level database.

The commission agrees with AT&T that the issue of unbillable long distance calls exceeds the scope of this proceeding. The current rulemaking seeks to prevent improper billing after a carrier change.

Third-party administrator.

AT&T stated that, outside of the OBF guidelines, at present there is no other reliable alternative for a carrier to receive timely, accurate, and reliable data regarding a customer's billing information and choice of PIC. AT&T stated that the commission should undertake the process of implementing mandatory transmission of

minimum customer account information. According to AT&T , a mandatory and uniform customer account information process would ensure that all service providers have timely and accurate information necessary to provide proper service and billing to their customers. AT&T stated that, due to the expedited nature of this proceeding, the commission may not be able to implement mandatory customer account information requirements in this rule. AT&T requested that the commission, in its order adopting this rule, recognize national efforts to develop mandatory, uniform minimum data elements that should be transmitted, and express the commission's intention to incorporate minimum data set requirements in its own rules as "national" requirements are developed at the Federal Communications Commission (FCC).

AT&T stated that a neutral third party administrator (TPA) would be the most efficient long-term means of ensuring that appropriate customer information is exchanged between industry participants. AT&T suggested that the commission address the issue using a TPA in a follow-on proceeding upon completion of this initial rulemaking. AT&T requested that the commission initiate and lead a collaborative effort of interested industry players to identify and document the detailed functional requirements for TPA and minimum mandatory data exchanges and to recommend vendors to the commission. AT&T stated that, as both the largest CLEC and IXC, it would support a modification to the proposed rule that incorporated a safety valve to address notification requirements. AT&T explained that if the LEC and IXC did not have existing relationships and could not mutually agree to a solution in the time frames required by the rule, the LEC would be able to meet its notice obligations under the rule by utilizing a clearinghouse to publish notices for retrieval by the IXCs.

During the hearing, SWBT stated, and Verizon concurred, that this rulemaking is not the appropriate proceeding under which to raise the issue of an industry TPA.

The commission agrees with SWBT and Verizon that the current rulemaking is not the proper forum in which to address the issue of an industry-wide, uniform system of records exchange or use of a TPA. However the commission notes the concern that carriers participate in a uniform records exchange process for the reliable and consistent exchange of customer information. The commission believes that, in the interest of furthering customer protection against unauthorized changes in subscriber carrier and/or unauthorized billing charges, it is appropriate to investigate AT&T 's concerns in a subsequent proceeding.

Customer information changes.

AT&T proposed language requiring LSPs to provide timely notice of changes in customer information, such as customer name and address, each time this information changes, not just when there is change in provider.

The commission understands AT&T 's concern that the lack of timely communication of changes in customer information may contribute to billing errors. However, given the expedited nature of this proceeding, the commission finds it more appropriate to address this issue in a subsequent proceeding where more thorough information can be gathered from various interested parties.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent. The commission modifies subsection (m)(1)(C) and (F) by replacing "is requesting" with "requests" to improve their readability. The commission also replaces "execute" with "implement" in subsection (m)(2)(A)(iii) to avoid possible confusion that the recipient of the notice necessarily executes the change in the switch.

This amendment is adopted under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated (Vernon 1998, Supplement 2002) §14.002 (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically PURA §§55.301-55.308, which require the commission to adopt nondiscriminatory and competitively neutral rules to protect customers during a change in the selection of a new telecommunications utility; PURA §60.002, which grants the commission authority to implement competitive safeguards to ensure fair competition in the Texas telecommunications market; and PURA §17.004 and §64.004, which authorize the commission to adopt rules to protect customers from being billed for services that were not authorized or provided and to ensure that a customer's choice of provider is honored.

Cross Reference to Statutes: PURA §§14.002, 55.301-55.308, 60.002, and 64.004.

§26.130. Selection of Telecommunications Utilities.

(a) Purpose and Application.

(1) Purpose. The provisions of this section are intended to ensure that all customers in this state are protected from an unauthorized change in a customer's local or long-distance telecommunications utility.

(2) Application. This section, including any references in this section to requirements in 47 Code of Federal Regulations (C.F.R.) §64.1120 and §64.1130 (changing long distance service), applies to all "telecommunications utilities," as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to an unauthorized charge unrelated to a change in preferred telecommunications utility which is addressed in §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

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

(1) Authorized telecommunications utility -- Any telecommunications utility that submits a change request that is in accordance with the requirements of this section.

(2) Customer -- Any person, and that person's spouse, in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to be billed for telephone service.

(3) Executing telecommunications utility -- Any telecommunications utility that effects a request that a customer's preferred telecommunications utility be changed. A telecommunications utility may be treated as an executing telecommunications utility; however, if it is responsible for any unreasonable delays in the execution of telecommunications utility changes or for the execution of unauthorized telecommunications utility changes, including fraudulent authorizations.

(4) Submitting telecommunications utility -- Any telecommunications utility that requests on behalf of a customer that the customer's preferred telecommunications utility be changed.

(5) Unauthorized telecommunications utility -- Any telecommunications utility that submits a change request that is not in accordance with the requirements of this section.

(c) Changes in preferred telecommunications utility.

(1) Changes by a telecommunications utility. Before a change order is processed, the submitting telecommunications utility must obtain verification from the customer that such change is desired for each affected telephone line(s) and ensure that such verification is obtained in accordance with 47 C.F.R. §64.1120. In the case of a change by written solicitation, the submitting telecommunications utility must obtain verification as specified in 47 C.F.R. §64.1130, and subsection (d) of this section, relating to Letters of Agency. The submitting telecommunications utility shall submit a change order within 60 days after obtaining verification from the customer. The submitting telecommunications utility must maintain records of all changes, including verifications, for a period of 24 months and shall provide such records to the customer, if the customer challenges the change, and to the Public Utility Commission (commission) staff upon request. A change order must be verified by one of the following methods:

(A) Written or electronically signed authorization from the customer in a form that meets the requirements of subsection (d) of this section. A customer shall be provided the option of using another authorization method in lieu of an electronically signed authorization.

(B) Electronic authorization placed from the telephone number which is the subject of the change order except in exchanges where automatic recording of the automatic number identification (ANI) from the local switching system is not technically possible. The submitting telecommunications utility must:

(i) ensure that the electronic authorization confirms the information described in subsection (d)(3) of this section; and

(ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change so that a customer calling toll-free number(s) will reach a voice response unit or similar mechanism that records the required information regarding the change and automatically records the ANI from the local switching system.

(C) Oral authorization by the customer for the change that meets the following requirements:

(i) The customer's authorization shall be given to an appropriately qualified and independent third party that confirms appropriate verification data such as the customer's date of birth or mother's maiden name.

(ii) The verification must be electronically recorded in its entirety on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

(iii) The recording shall include clear and conspicuous confirmation that the customer authorized the change in telephone service provider.

(iv) The third party verification shall elicit, at minimum, the identity of the customer, confirmation that the person on the call is authorized to make the change in service, the names of the telecommunications utilities affected by the change, the telephone number(s) to be switched, and the type of service involved.

(v) The third party verification shall be conducted in the same language used in the sales transaction.

(vi) Automated systems shall provide customers the option of speaking with a live person at any time during the call.

(vii) A telecommunications utility or its sales representative initiating a three-way call or a call through an automated verification system shall drop off the call once a three-way connection has been established.

(viii) The independent third party shall:

(I) not be owned, managed, or directly controlled by the telecommunications utility or the telecommunications utility's marketing agent;

(II) not have financial incentive to confirm change orders; and

(III) operate in a location physically separate from the telecommunications utility or the telecommunications utility's marketing agent.

(2) Changes by customer request directly to the local exchange company. If a customer requests a change in preferred telecommunications utility by contacting the local exchange company directly and the local exchange company is not the chosen carrier or affiliate of the chosen carrier, the verification requirements in paragraph (1) of this subsection do not apply. The local exchange company shall maintain a record of the customer's request for 24 months.

(d) Letters of Agency (LOA). A written or electronically signed authorization from a customer for a change of telecommunications utility shall use a letter of agency (LOA) as specified in this subsection:

(1) The LOA shall be a separate or easily separable document or located on a separate screen or webpage containing only the authorizing language described in paragraph (3) of this subsection for the sole purpose of authorizing the telecommunications utility to initiate a telecommunications utility change. The LOA must be signed and dated by the customer requesting the telecommunications utility change. An LOA submitted with an electronically signed authorization shall include the consumer disclosures required by the *Electronic Signatures in Global and National Commerce Act* §101(c).

(2) The LOA shall not be combined with inducements of any kind on the same document, screen, or webpage except that the LOA may be combined with a check as specified in subparagraphs (A) and (B) of this paragraph:

(A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.

(B) A check combined with an LOA shall not contain any promotional language or material but shall contain on the front and back of the check in easily readable, bold-faced type near the signature line, a notice similar in content to the following: "By signing this check, I am authorizing (name of the telecommunications utility) to be my new telephone service provider for (the type of service that will be provided)."

(3) LOA language.

(A) At a minimum, the LOA shall be printed with sufficient size and readable type to be clearly legible and shall contain clear and unambiguous language that confirms:

(i) the customer's billing name and address and each telephone number to be covered by the preferred telecommunications utility change order;

(ii) the decision to change preferred carrier from the current telecommunications utility to the new telecommunications utility and identifies each;

(iii) that the customer designates (name of the new telecommunications utility) to act as the customer's agent for the preferred carrier change;

(iv) that the customer understands that only one preferred telecommunications utility may be designated for each type of service (local, intraLATA, and interLATA) for each telephone number. The LOA shall contain separate statements regarding those choices, although a separate LOA for each service is not required; and

(v) that the customer understands that any preferred carrier selection the customer chooses may involve a one-time charge to the customer for changing the customer's preferred telecommunications utility and that the customer may consult with the carrier as to whether a fee applies to the change.

(B) The following LOA form meets the requirements of this subsection. Other versions may be used, but shall comply with all of the requirements of this subsection.
Figure: 16 TAC §26.130(d)(3)(B) (No change.)

(4) The LOA shall not require that a customer take some action in order to retain the customer's current telecommunications utility.

(5) If any portion of an LOA is translated into another language, then all portions must be translated. The LOA must be translated into the same language as promotional materials, oral descriptions or instructions provided with the LOA.

(e) Notification of alleged unauthorized change.

(1) When a customer informs an executing telecommunications utility of an alleged unauthorized telecommunications utility change, the executing telecommunications utility shall immediately notify both the authorized and alleged unauthorized telecommunications utility of the incident.

(2) Any telecommunications utility, executing, authorized, or alleged unauthorized, that is informed of an alleged unauthorized telecommunications utility change shall direct the customer to contact the Public Utility Commission of Texas.

(3) The alleged unauthorized telecommunications utility shall remove all unpaid charges pending a determination of whether an unauthorized change occurred.

(4) The alleged unauthorized telecommunications utility may challenge a complainant's allegation of an unauthorized change by notifying the complainant to file a complaint with the Public Utility Commission of Texas within 30 days. If the complainant does not file a complaint within 30 days, the unpaid charges may be reinstated.

(5) The alleged unauthorized telecommunications utility shall take all actions within its control to facilitate the customer's prompt return to the original telecommunication utility within three business days of the customer's request.

(6) The alleged unauthorized telecommunications utility shall also be liable to the customer for any charges assessed to change the customer from the authorized telecommunications utility to the alleged unauthorized telecommunications utility in addition to charges assessed for returning the customer to the authorized telecommunications utility.

(f) Unauthorized changes.

(1) Responsibilities of the telecommunications utility that initiated the change. If a customer's telecommunications utility is changed without verification consistent with this section, the telecommunications utility that initiated the unauthorized change shall:

(A) take all actions within its control to facilitate the customer's prompt return to the original telecommunication utility within three business days of the customer's request;

(B) pay all charges associated with returning the customer to the original telecommunications utility within five business days of the customer's request;

(C) provide all billing records to the original telecommunications utility related to the unauthorized change of services within ten business days of the customer's request;

(D) pay the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the unauthorized change had not occurred, within 30 business days of the customer's request;

(E) return to the customer within 30 business days of the customer's request:

(i) any amount paid by the customer for charges incurred during the first 30 days after the date of an unauthorized change; and

(ii) any amount paid by the customer after the first 30 days in excess of the charges that would have been charged if the unauthorized change had not occurred; and

(F) remove all unpaid charges.

(2) Responsibilities of the original telecommunications utility. The original telecommunications utility shall:

(A) inform the telecommunications utility that initiated the unauthorized change of the amount that would have been charged for identical services if the unauthorized change had not occurred, within ten business days of the receipt of the billing records required under paragraph (1)(C) of this subsection;

(B) where possible, provide to the customer all benefits associated with the service, such as frequent flyer miles that would have been awarded had the unauthorized change not occurred, on receiving payment for service provided during the unauthorized change;

(C) maintain a record of customers that experienced an unauthorized change in telecommunications utilities that contains:

(i) the name of the telecommunications utility that initiated the unauthorized change;

(ii) the telephone number(s) affected by the unauthorized change;

(iii) the date the customer asked the telecommunications utility that made the unauthorized change to return the customer to the original telecommunications utility; and

(iv) the date the customer was returned to the original telecommunications utility; and

(D) not bill the customer for any charges incurred during the first 30 days after the unauthorized change, but may bill the customer for unpaid charges incurred after the first 30 days based on what it would have charged if the unauthorized change had not occurred.

(g) Notice of customer rights.

(1) Each telecommunications utility shall make available to its customers the notice set out in paragraph (3) of this subsection.

(2) Each notice provided under paragraph (5)(A) of this subsection shall contain the name, address and telephone numbers where a customer can contact the telecommunications utility.

(3) Customer notice. The notice shall state:
Figure: 16 TAC §26.130(g)(3) (No change.)

(4) The customer notice requirements in paragraph (3) of this subsection may be combined with the notice requirements of §26.32(g)(1) and (2) of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) if all of the information required by each is in the combined notice.

(5) Language, distribution and timing of notice.

(A) Telecommunications utilities shall send the notice to new customers at the time service is initiated, and upon customer request.

(B) Each telecommunications utility shall print the notice in the white pages of its telephone directories, beginning with any directories published 30 days after the effective date of this section and thereafter. The notice that appears in the directory is not required to list the information contained in paragraph (2) of this subsection.

(C) The notice shall be in both English and Spanish as necessary to adequately inform the customer. The commission may exempt a telecommunications utility from the Spanish requirement if the telecommunications utility shows that 10% or fewer of its customers are exclusively Spanish-speaking, and that the telecommunications utility will notify all customers through a statement in both English and Spanish that the information is available in Spanish by mail from the telecommunications utility or at the utility's offices.

(h) Compliance and enforcement.

(1) Records of customer verifications and unauthorized changes. A telecommunications utility shall provide a copy of records maintained under the requirements of subsections (c), (d), and (f)(2)(C) of this section to the commission staff upon request.

(2) Administrative penalties. If the commission finds that a telecommunications utility is in violation of this section, the commission shall order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties pursuant to the Public Utility Regulatory Act (PURA) §15.023 and §15.024.

(3) Certificate revocation. If the commission finds that a telecommunications utility is repeatedly and recklessly in violation of this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the telecommunications utility, thereby denying the telecommunications utility the right to provide service in this state.

(4) Coordination with the office of the attorney general. The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the office of the attorney general in order to ensure consistent treatment of specific alleged violations.

(i) Notice of identity of a customer's telecommunications utility. Any bill for telecommunications services must contain the following information in easily-read, bold type in each bill sent to a customer. Where charges for multiple lines are included in a single bill, this information must appear on the first page of the bill if possible or displayed prominently elsewhere in the bill:

(1) The name and telephone number of the telecommunications utility providing local exchange service if the bill is for local exchange service.

(2) The name and telephone number of the primary interexchange carrier if the bill is for interexchange service.

(3) The name and telephone number of the local exchange and interexchange providers if the local exchange provider is billing for the interexchange carrier. The commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.

(4) A statement that customers who believe they have been slammed may contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, fax: (512) 936-7003, e-mail address: customer@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. This statement may be combined with the statement requirements of §26.32(g)(4) of this title if all of the information required by each is in the combined statement.

(j) Preferred telecommunications utility freezes.

(1) Purpose. A preferred telecommunications utility freeze ("freeze") prevents a change in a customer's preferred telecommunications utility selection unless the customer gives consent to the local exchange company that implemented the freeze.

(2) Nondiscrimination. All local exchange companies that offer freezes shall offer freezes on a nondiscriminatory basis to all customers regardless of the customer's telecommunications utility selection except for local telephone service.

(3) Type of service. Customer information on freezes shall clearly distinguish between intraLATA and interLATA telecommunications services. The local exchange company offering a freeze shall obtain separate authorization for each service for which a freeze is requested.

(4) Freeze information. All information provided by a telecommunications utility about freezes shall have the sole purpose of educating customers and providing information in a neutral way to allow the customer to make an informed decision, and shall not market or induce the customer to request a freeze. The freeze information provided to customers shall include:

(A) a clear, neutral explanation of what a freeze is and what services are subject to a freeze;

(B) instructions on lifting a freeze that make it clear that these steps are in addition to required verification for a change in preferred telecommunications utility;

(C) an explanation that the customer will be unable to make a change in telecommunications utility selection unless the customer lifts the freeze; and

(D) a statement that there is no charge to the customer to impose or lift a freeze.

(5) Freeze verification. A local exchange company shall not implement a freeze unless the customer's request is verified using one of the following procedures:

(A) A written and signed or electronically signed authorization that meets the requirements of paragraph (6) of this subsection.

(B) An electronic authorization placed from the telephone number on which a freeze is to be imposed. The electronic authorization shall confirm appropriate verification data such as the customer's date of birth or mother's maiden name and the information required in paragraph (6)(G) of this subsection. The local exchange company shall establish one or more toll-free telephone numbers exclusively for this purpose. Calls to the number(s) will connect the customer to a voice response unit or similar mechanism that records the information including the originating ANI.

(C) An appropriately qualified independent third party obtains the customer's oral authorization to submit the freeze and confirms appropriate verification data such as the customer's date of birth or mother's maiden name and the information required in paragraph (6)(G) of this subsection. This shall include clear and conspicuous confirmation that the customer authorized a freeze. The independent third party shall:

(i) not be owned, managed, or directly controlled by the local exchange company or the local exchange company's marketing agent;

(ii) not have financial incentive to confirm freeze requests; and

(iii) operate in a location physically separate from the local exchange company or its marketing agent.

(D) Any other method approved by Federal Communications Commission rule or order granting a waiver.

(6) Written authorization. A written freeze authorization shall:

(A) be a separate or easily separable document with the sole purpose of imposing a freeze;

(B) be signed and dated by the customer;

(C) not be combined with inducements of any kind;

(D) be completely translated into another language if any portion is translated;

(E) be translated into the same language as any educational materials, oral descriptions, or instructions provided with the written freeze authorization;

(F) be printed with readable type of sufficient size to be clearly legible; and

(G) contain clear and unambiguous language that confirms:

(i) the customer's name, address, and telephone number(s) to be covered by the freeze;

(ii) the decision to impose a freeze on the telephone number(s) and the particular service with a separate statement for each service to be frozen;

(iii) that the customer understands that a change in telecommunications utility cannot be made unless the customer lifts the freeze; and

(iv) that the customer understands that there is no charge for imposing or lifting a freeze.

(7) Lifting freezes. A local exchange company that executes a freeze request shall allow customers to lift a freeze by:

(A) written and signed or electronically signed authorization stating the customer's intent to lift a freeze;

(B) oral authorization stating an intent to lift a freeze confirmed by the local exchange company with appropriate confirmation verification data such as the customer's date of birth or mother's maiden name;

(C) a three-way conference call with the local exchange company, the telecommunications utility that will provide the service, and the customer; or

(D) any other method approved by Federal Communications Commission rule or order granting a waiver.

(8) No customer charge. The customer shall not be charged for imposing or lifting a freeze.

(9) Local service freeze prohibition. A local exchange company shall not impose a freeze on local telephone service.

(10) Marketing prohibition. A local exchange company shall not initiate any marketing of its services during the process of implementing or lifting a freeze.

(11) Freeze records retention. A local exchange company shall maintain records of all freezes and verifications for a period of 24 months and shall provide these records to customers and to the commission staff upon request.

(12) Suggested freeze information language. Telecommunications utilities that inform customers about freezes may use the following language. Other versions may be used, but shall comply with all of the requirements of paragraph (4) of this subsection.
Figure: 16 TAC §26.130(j)(12) (No change.)

(13) Suggested freeze authorization form. The following form is recommended for written authorization from a customer requesting a freeze. Other versions may be used, but shall comply with all of the requirements of paragraph (6) of this subsection.
Figure: 16 TAC §26.130(j)(13) (No change.)

(14) Suggested freeze lift form. The following form is recommended for written authorization to lift a freeze. Other versions may be used, but shall comply with all of the requirements of paragraph (7) of this subsection.
Figure: 16 TAC §26.130(j)(14) (No change.)

(k) Transferring customers from one telecommunications utility to another.

(1) Any telecommunications utility that will acquire customers from another telecommunications utility that will no longer provide service due to acquisition, merger, bankruptcy or any other reason, shall provide notice to every affected customer. The notice shall be in a billing insert or separate mailing at least 30 days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 days prior to the transfer, the notice shall be sent promptly after all legal and regulatory conditions are met. The notice shall:

(A) identify the current and acquiring telecommunications utilities;

(B) explain why the customer will not be able to remain with the current telecommunications utility;

(C) explain that the customer has a choice of selecting a service provider and may select the acquiring telecommunications utility or any other telecommunications utility and that the customer may incur a charge if the customer selects another telecommunications utility;

(D) explain that if the customer wants another telecommunications utility, the customer should contact that telecommunication utility or the local telephone company;

(E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;

(F) identify the effective date that customers will be transferred to the acquiring telecommunications utility;

(G) provide the rates and conditions of service of the acquiring telecommunications utility and how the customer will be notified of any changes;

(H) explain that the customer will not incur any charges associated with the transfer;

(I) explain whether the acquiring carrier will be responsible for handling complaints against the transferring carrier; and

(J) provide a toll-free telephone number for a customer to call for additional information.

(2) The acquiring telecommunications utility shall provide the Customer Protection Division (CPD) with a copy of the notice when it is sent to customers.

(l) Complaints to the commission. A customer may file a complaint with the commission's Customer Protection Division against a telecommunications utility for any reasons related to the provisions of this section.

(1) Customer complaint information. CPD shall request the following information:

(A) the customer's name, address, and telephone number;

(B) a brief description of the facts of the complaint;

(C) a copy of the customer's and spouse's legal signature; and

(D) a copy of the most recent phone bill and any prior phone bill that shows the switch in carrier.

(2) Telecommunications utility's response to complaint. After review of a customer's complaint, CPD shall forward the complaint to the telecommunications utility. The telecommunications utility shall respond to CPD within 21 calendar days after CPD forwards the complaint. The telecommunications utility's response shall include the following:

(A) all documentation related to the authorization and verification used to switch the customer's service; and

(B) all corrective actions taken as required by subsection (f) of this section, if the switch in service was not verified in accordance with subsections (c) and (d) of this section.

(3) CPD investigation. CPD shall review all of the information related to the complaint and make a determination on whether or not the telecommunications utility complied with the requirements of this section. CPD shall inform the complainant and the alleged unauthorized telecommunications utility of the results of the investigation and identify any additional corrective actions that may be required. CPD shall also inform the authorized telecommunications utility if there was an unauthorized change in service.

(m) Additional requirements for changes involving certain telecommunications utilities.

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

(A) Local service provider (LSP)--the certified telecommunications utility chosen by a customer to provide local exchange service to that customer.

(B) Old local service provider (old LSP)--The local service provider immediately preceding the change to a new local service provider.

(C) New local service provider (new LSP)--The local service provider from which the customer requests new service.

(D) Primary interexchange carrier (PIC)--the provider chosen by a customer to carry that customer's toll calls. For the purposes of this subsection, any reference to primary interexchange carrier refers to both interLATA and intraLATA toll carriers.

(E) Old primary interexchange carrier (old PIC)--The primary interexchange carrier immediately preceding the change to a new primary interexchange carrier.

(F) New primary interexchange carrier (new PIC)--The primary interexchange carrier from which the customer requests new service or continuing service after changing local service providers.

(G) Change execution--means the date the LSP initially has knowledge of the PIC or LSP change in the switch.

(2) Contents and delivery of notice required by paragraphs (3) and (4) of this subsection.

(A) Notice shall contain at least:

(i) the effective date of the change in the switch;

(ii) the customer's billing name, address, and number; and

(iii) any other information necessary to implement the change.

(B) If an LSP does not otherwise have the appropriate contact information for notifying a PIC, then the LSP's notification to the PIC shall be deemed complete upon delivery of the notice to the PIC's address, facsimile number or e-mail address listed in the appropriate Utility Directory maintained by the commission.

(3) Notification requirements for change in PIC only. The LSP shall notify the old PIC and the new PIC of the PIC change within five business days of the change execution.

(A) The new PIC shall initiate billing the customer for presubscribed services within five business days after receipt of such notice.

(B) The old PIC shall discontinue billing the customer for presubscribed services within five business days after receipt of such notice.

(4) Notification requirements for change in LSP.

(A) Requirement of the new LSP to notify the old LSP. Within five business days of the change execution, the new LSP shall notify the old LSP of the change in the customer's LSP.

(B) Requirement of the new LSP to notify the new PIC. Within five business days of the change execution, the new LSP shall notify the new PIC of the customer's selection of such PIC as the customer's PIC.

(C) Requirement of the old LSP to notify the old PIC. Within five business days of the old LSP's receipt of notice pursuant to subparagraph (A) of this paragraph, the old LSP shall notify the old PIC that the old LSP is no longer the customer's LSP.

(5) Requirements of the new PIC to initiate billing customer. If the new PIC receives notice pursuant to paragraph (4)(B) of this subsection, within five business days after receipt of such notice, the new PIC shall initiate billing the customer for presubscribed services.

(6) Requirements of the old PIC to discontinue billing customer. If the old PIC receives notice pursuant to paragraph (4)(C) of this subsection that the old LSP is no longer the customer's LSP, the

old PIC shall discontinue billing the customer for presubscribed services within seven business days after receipt of such notice, unless the new LSP notifies the old PIC that it is the new PIC pursuant to paragraph (4)(B) of this subsection.

(7) Compliance with this subsection is required by January 1, 2003.

(n) Reporting requirement. Each telecommunications utility shall file a semiannual slamming report with the commission's Central Records in the assigned project number as required by paragraphs (1) and (2) of this subsection. A project number will be assigned each calendar year for this report.

(1) The report shall use the format and information required by 47 C.F.R. §64.1180 containing only Texas-specific data.

(2) Reports shall be submitted on August 31 (covering January 1 through June 30) and February 28 (covering July 1 through December 31).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 1, 2002.

TRD-200206371
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 21, 2002
Proposal publication date: July 26, 2002
For further information, please call: (512) 936-7306

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PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 101. PRACTICE AND PROCEDURE
SUBCHAPTER C. ADJUDICATIVE PROCEEDINGS AND HEARINGS

16 TAC §101.62, §101.66

The Texas Motor Vehicle Board of the Texas Department of Transportation adopts amendments to 16 TAC §101.62 and §101.66, concerning the submission of replies to exceptions and amicus briefs, as published in the July 5, 2002, issue of the *Texas Register* (27 TexReg 5936). Section 101.62 and §101.66 are adopted without changes and will not be republished.

Explanation of Amendments.

The amendment to 16 TAC §101.62, concerning replies to exceptions, clarifies that the Board will not allow parties to a contested case to file multiple written responses to exceptions, beyond those currently allowed under the Board's rules. The Board adopts this amendment because many parties to contested cases file multiple written responses to arguments brought forth by their opponents in exceptions to the proposal for decision and replies thereto. The Board considers many of these submissions that are filed outside of the rules extraneous and unnecessarily repetitive. Furthermore, the documents clutter the Board's record and make efficient adjudication of contested cases more difficult from a procedural standpoint.

The amendments to 16 TAC §101.66, concerning amicus briefs, change the current deadline for amicus briefs, so that amicus curiae must file its brief no later than the deadline for exceptions to the proposal for decision. The amendments also allow parties to file a written response to the amicus brief no later than the filing deadline for replies to exceptions. The prior rule allowed the amicus curiae to file a brief in a contested case proceeding as late as seven days before the meeting where the proceeding was scheduled to be heard.

These amendments are designed to address concerns that parties to contested cases do not have sufficient time to reply to new arguments presented in an amicus brief, under the previous rule. Furthermore, the amendments allow an increase in the amount of time that the Board has to review an amicus brief and responses to that brief when considering a contested case. Should there be a circumstance where a party has a legitimate need for more time to file an amicus brief, the rule allows an exception to its deadlines where good cause can be shown.

In consideration of the foregoing and in recognition of concerns regarding these issues, the Board has adopted these amendments. The public will benefit from these amendments by having greater efficiency in the contested case process and greater due process for all parties before the Board.

Summary of Comments.

The Board received both written comments and oral comments on the amendments to 16 TAC §101.62 and §101.66. The Texas Automobile Dealers Association (TADA) provided written and oral comments opposing the amendments to these sections. A private attorney who often represents parties before the Board provided comments opposing the amendments. Oral comments were received at the Board's hearing on the proposed amendments on September 19, 2002. At that hearing, Mr. Tom Blanton of TADA spoke against the amendments. Additionally, Mr. Lloyd E. Ferguson of Strasburger & Price, who also represents private parties before the Board, presented comments in favor of the amendments to §101.66.

Comments opposing the amendment to §101.62 suggested that its limitation on submissions to the Board acted as an arbitrary restraint on a party's due process rights.

Comments in favor of the amendments to 16 TAC §101.66 reminded the Board that in recent cases where amicus briefs had been filed, the late appearance of the briefs had created many difficult logistical problems for the staff and the Board. The supporter of the amendments suggested that the Board does not see the typical sort of amicus brief in its contested cases. A typical amicus brief informs a decision-maker regarding a limited issue, but in cases before the Board, amici will often choose sides between the parties. This presents the parties with many difficulties, particularly when the amici present new arguments the opposing party has never seen. Oral argument does not necessarily provide the party opposing the amicus with an adequate opportunity to respond to such arguments. The supporting speaker also stated that in his experience, the party supported by the amicus usually keeps the amicus apprised of the progress of the case.

In opposition to the amendments to §101.66, opponents stated that the rules of the Board often do not allow interested associations to participate as parties in a proceeding, and that's why they submit amicus briefs. Opponents felt this rule was elevating the amicus to be treated as a party, which contradicts the

historical treatment of the amicus. One opponent to the amendments suggested that the time limits for parties existed because the Board had a duty to consider the arguments presented by the parties, and as the Board has no duty to consider the amicus, no deadlines should be enforced. Furthermore, another comment against the amendments stated that interested associations rarely receive an ALJ's decision within the same time period in which a party-in-interest does. Concerns were also expressed that a potential amicus might not find out about an important decision until after the time had passed to provide a brief. Often, an association will have to meet with its governing board to consult regarding its position on an issue before writing and submitting a brief, and to become thoroughly familiar with the record of the case. Therefore, this created concern that an association would not have adequate time within the amended deadline to complete these tasks and to submit a brief. One comment stated that these amendments put unreasonable restrictions on amici, and further that the convenience of staff should be subordinate to the rights of interested parties to be heard.

Generally, the opponents stated, the amicus is merely trying to present information helpful to the trier of fact. They noted that the Texas Appellate Courts have no deadline for filing amicus briefs with those courts. Furthermore, opponents to the amendments stated that the Board is not bound to consider the amicus.

Reasons for Disagreement with Party Submissions or Proposals

The Board disagrees with comments opposing the amendment to 16 TAC §101.62, which characterize the limit on the number of post-hearing submissions to the Board as an arbitrary restraint on a party's due process. Instead, the Board notes that the Administrative Procedure Act (APA) (TEX. GOV'T CODE §2001.001, et. seq.) specifically allows parties to a contested case hearing to submit to a final decision-maker exceptions to a proposal for decision, and replies to the exceptions of an opposing party. No other types of post-hearing submissions are described within the APA.

With regard to the comments submitted in opposition to the amendments to 16 TAC §101.66, the Board disagrees with comments suggesting that the Board's rules do not allow for interested parties to participate in contested case proceedings before the Board. Board rule 16 TAC §101.6(d) allows for public officials or other interested persons to intervene in a proceeding and present evidence and argument with the approval of the Board or hearing officer.

The Board neither agreed nor disagreed with the suggestion that the rule will elevate the treatment of amici to the status of a party in a proceeding. As noted by supporters of the amendments, amici before the Board tend to be somewhat partisan regarding the issues in a contested case. Recent Board experience has shown that sometimes amici present new and previously unheard arguments, and in some cases have provided new evidence, asking the Board to take official notice of these items. In those recent cases, opposing parties have made vigorous objections to such post-hearing submissions, and the Board has had to make immediate decisions regarding whether to entertain amicus briefs and the material attached to them. The Board neither agreed nor disagreed with comments asserting that it has no duty to consider the arguments and information presented by amici.

Many concerns about timely notification of the issuance of a proposal for decision were expressed in written comments and in oral presentations made before the Board. The Board disagrees that this would necessarily prevent an amicus from being able to submit briefs. Contained within the amended rule is a good cause exception to the time limits prescribed by the rule. If an amicus does not receive timely notification of the subject of the proposal for decision, that amicus may file a motion with the Board, accompanying their brief, requesting leave of the Board to late file the item.

Overall, the Board was not persuaded by the argument that time constraints on the amici outweigh the Board's concerns about the parties' due process rights, and its own need to review pertinent filed materials-whether it may disregard the information or not. Under the preexisting rule, Board members in distant cities had less than a week to read and review an amicus brief. Furthermore, the parties, whose direct interest was affected by the Board's decision, had no ability under the rules to file written responses to an amicus brief, as parties are prevented from submitting materials to the Board less than 15 days prior to the Board meeting where the matter is scheduled to be heard. As a result, if the parties wished to respond or object to an amicus brief, they had to file requests for leave to respond or object, which were not considered until the day of the meeting when the matter was heard. The Board felt these considerations justified the adoption of amendments.

One opponent suggested that the Board decline to adopt the amendments to §101.66, and instead treat amicus briefs as the Texas appellate courts do. These courts have no deadline for the submission of amicus briefs. They are not technically filed before the Courts. The Board disagrees with this suggestion, because it recognizes that its process is substantially different from that of the Texas Appellate Courts--as those courts receive briefs and oral argument on a case, and then have an extended period of time to read and review the record, and entertain objections before making a decision. The Board receives the proposal for decision, and the parties' exceptions and replies to exceptions, and generally makes a decision at the meeting after oral argument is presented. Therefore, a procedure about what information shall be considered in making a final determination in a contested case is crucial. The Board also noted it would not favor granting good cause exceptions to these timelines where an amicus sought merely to delay proceedings.

Statutory Authority

The Board is authorized to adopt these amendments under §3.06 of the Texas Motor Vehicle Commission Code, Article 4413(36) and (36a), Texas Revised Civil Statutes, which provides the Board with the authority to adopt rules necessary and convenient to effectuate the provisions of the Code and to govern practice and procedure before the agency.

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 October 7, 2002.

TRD-200206449
Brett Bray
Director
Texas Motor Vehicle Board
Effective date: October 27, 2002
Proposal publication date: July 5, 2002
For further information, please call: (512) 416-4899

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 33. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT SUBCHAPTER G. DENTAL SERVICES

25 TAC §§33.301, 33.306, 33.308, 33.314, 33.316, 33.317

The Texas Department of Health (department) adopts amendments to §§33.301, 33.306, 33.308, 33.314, 33.316, and 33.317, concerning the administration of the Texas Health Steps (THSteps) dental services program, without changes to the proposed text as published in the June 7, 2002, issue of the *Texas Register* (27 TexReg 4911) and therefore, the sections will not be republished.

The dental program is a component of the Medicaid Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program. The EPSDT program is known in Texas as THSteps. Specifically, the amendments clarify EPSDT dental screening providers' standards of care and documentation requirements.

An amendment to §33.301, Definitions, corrects the subchapter references to which the rules are applicable.

An additional amendment to §33.301, and the proposed amendments to §§33.306, Allowable Services and Limitations; §33.314, Claims; §33.316, Standards of Care; and §33.317, Management of Complaints, implement House Bill 3507, 77th Legislative Session (2001), which amended Chapter 32, Human Resources Code, concerning the Texas medical assistance programs (Medicaid). These amendments add a definition for dental necessity in the THSteps dental services program and mandate dental necessity as a condition for provider reimbursement, standards of care, and complaint management. These amendments also replace the term "medical necessity" with "dental necessity" throughout the program rules.

The amendment to §33.308, Requirements for Provider Enrollment and Continuing Participation, requires providers to document the dental necessity of a stainless steel crown as a condition for a provider's continuing participation in Texas Health Steps and to comply with documentation and record keeping requirements established by the State Board of Dental Examiners.

There were no comments received during the comment period on the proposed amendments.

The amendments are adopted under the Human Resources Code, §32.021(c), which allows the department to establish rules governing the Medicaid program; the Human Resources Code, §32.053, which requires certain rules on dental services; the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for its procedures and the performance of each duty imposed by law on the board, the department, and the Commissioner of Health; and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's medical assistance program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 4, 2002.

TRD-200206432
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: October 24, 2002
Proposal publication date: June 7, 2002
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 15. SURPLUS LINES INSURANCE SUBCHAPTER A. GENERAL REGULATION OF SURPLUS LINES INSURANCE

28 TAC §§15.2 - 15.5

The Commissioner of Insurance adopts amendments to §§15.2 -15.5 concerning the regulation of surplus lines agents. The amended sections are adopted without changes to the proposed text published in the August 16, 2002 issue of the *Texas Register* (27 TexReg 7363) and will not be republished.

The adopted amendments are necessary so that agents and new applicants can determine when an individual is required to have a surplus lines license. The adopted amendments also clarify how a surplus lines agent can meet the agent's financial responsibility requirement; clarify statutory changes affecting resident and nonresident license applicants; and clarify conduct that may be sanctioned as a result of any violation of the Insurance Code or this subchapter, the available sanctions, and sanctioning procedures.

The adopted amendment to §15.2(11) adds the definition of "client." Adopted §15.3(a) lists insurance activities that are to be performed by a licensed surplus lines agent under Insurance Code Article 1.14-2. Adopted §15.3(b) lists activities that may be performed by unlicensed individuals. Adopted §15.3(c) clarifies that agency profits may be distributed to unlicensed employees, shareholders, and partners. Adopted §15.3(d) clarifies licensing submission requirements. Adopted §15.3(e) clarifies licensing requirements for Texas residents and nonresident applicants who do not hold a surplus lines license and/or are residents of a non-reciprocal state. Adopted §15.3(f) clarifies licensing requirements for nonresident applicants holding surplus lines licenses in reciprocal states. Adopted §15.3(g) clarifies license expiration and renewal procedures. Adopted amendments to §15.4(a) restate the commissioner's authority to waive the bond requirement as necessary to promote licensing reciprocity and uniformity under federal law. Adopted §15.4(b) and (c) provide the requirements for individuals and entities to meet the financial responsibility requirement. Adopted §15.4(d) and (e) clarify reporting responsibilities for both surplus lines agencies and agents when individual surplus lines agents become employed, or cease to be employed, by a surplus lines agency. Adopted amendments to §15.5 clarify activities for which surplus lines agents may be sanctioned, the available sanctions, and the procedures for sanctioning agents.

No comments were received.

The sections are adopted under Insurance Code Articles 1.14-2; 21.01; 21.01-2; 21.11 and §36.001. Insurance Code Article 1.14-2 §§2, 3A, and 4(b) and (c) authorize the commissioner to adopt rules necessary to implement Article 1.14-2, set financial responsibility requirements for surplus lines agents, determine license applications, and make Insurance Code Chapter 21, Subchapter A applicable to surplus lines agents. Article 21.01 §§3(1) and 4 also make Insurance Code Chapter 21, Subchapter A applicable to surplus lines agents and authorize the commissioner to adopt rules necessary to implement the subchapter. Article 21.01-2 §§1A - 4A and 6A establish license expirations and provide for license renewals, prohibited activities, license revocation, agent discipline, and judicial review of department actions. Article 21.11 §1(a)(2)(A) and (c) provide for licensing procedures which may be used by certain nonresident agents and authorize the commissioner to waive licensing requirements to promote licensing reciprocity between the states. Article 21.11 §1(e) provides for criminal history background checks of unlicensed nonresident agent applicants. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

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 October 1, 2002.

TRD-200206378
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: October 21, 2002
Proposal publication date: August 16, 2002
For further information, please call: (512) 463-6327

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 15. MEDICAID ELIGIBILITY

SUBCHAPTER E. INCOME

40 TAC §15.454

The Texas Department of Human Services (DHS) adopts an amendment to §15.454 without changes to the proposed text published in the July 26, 2002, issue of the *Texas Register* (27 TexReg 6669).

Justification for the amendment is to reflect a change in the way the Social Security Administration (SSA) recoups overpayments from former Supplemental Security Income (SSI) clients. Under a new federal law implemented by SSA in March 2002, if a client is no longer receiving SSI, SSA can recoup an SSI overpayment from the client's Retirement, Survivor and Disability Insurance (RSDI) benefit without the client's consent. State Medicaid rules must reflect that DHS counts the client's net RSDI benefit, not gross, in this situation.

The department received no comments regarding adoption of the amendment.

The amendment is adopted 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 Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.036 and §§32.001-32.052.

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 October 7, 2002.

TRD-200206448
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 1, 2002
Proposal publication date: July 26, 2002
For further information, please call: (512) 438-3734

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CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Texas Department of Human Services (DHS) adopts amendments to §97.249 and §97.501 in its Licensing Standards for Home and Community Support Services Agencies chapter without changes to the proposed text published in the August 23, 2002, issue of the *Texas Register* (27 TexReg 7783). The text of the rules will not be republished.

Justification for the amendment to §97.249 is to correct a statutory reference by changing it to Human Resources Code, §48.401. Justification for the amendment to §97.501 is to align the rule with statutory requirements regarding accreditation.

DHS received no comments regarding adoption of the amendments.

SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

DIVISION 3. AGENCY ADMINISTRATION

40 TAC §97.249

The amendment is adopted under the Health and Safety Code, Chapter 142, which provides DHS with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

The amendment implements the Health and Safety Code, §§142.001-142.030.

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 October 3, 2002.

TRD-200206424
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 1, 2002
Proposal publication date: August 23, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER E. SURVEYS

40 TAC §97.501

The amendment is adopted under the Health and Safety Code, Chapter 142, which provides DHS with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

The amendment implements the Health and Safety Code, §§142.001-142.030.

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 October 3, 2002.

TRD-200206425
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: November 1, 2002
Proposal publication date: August 23, 2002
For further information, please call: (512) 438-3734

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

Notice is given that the Commissioner of Insurance will consider a proposal made in a staff petition which seeks amendments of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 2002 and 2003 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-1002-37-I), was filed on October 3, 2002.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 2002 and 2003 model vehicles.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. A-1002-37-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on November 18, 2002 to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period defined above.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200206427
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 3, 2002

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plans--Revised

Texas Council on Alzheimer's Disease and Related Disorders

Title 25, Part 12

TRD-200206421
Filed: October 3, 2002

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Advisory Board of Athletic Trainers

Title 25, Part 1, Chapter 313

TRD-200206469
Filed: October 8, 2002

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Texas Diabetes Council

Title 25, Part 9

TRD-200206420
Filed: October 3, 2002

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Texas State Board of Examiners of Dietitians

Title 22, Part 31

TRD-200206442
Filed: October 4, 2002

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State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Title 22, Part 7

TRD-200206433
Filed: October 4, 2002

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Texas Board of Licensure for Professional Medical Physicists

Title 22, Part 26

TRD-200206435
Filed: October 4, 2002

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Texas State Board of Examiners of Marriage and Family Therapists

Title 22, Part 35

TRD-200206463
Filed: October 8, 2002

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Texas Medical Disclosure Panel

Title 25, Part 7

TRD-200206423
Filed: October 3, 2002

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Texas Midwifery Board

Title 22, Part 38

TRD-200206468
Filed: October 8, 2002

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Texas Board of Orthotics and Prosthetics

Title 22, Part 37

TRD-200206466
Filed: October 8, 2002

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Texas State Board of Examiners of Perfusionists

Title 22, Part 33

TRD-200206444
Filed: October 4, 2002

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Texas State Board of Examiners of Professional Counselors

Title 22, Part 30

TRD-200206441
Filed: October 4, 2002

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Council on Sex Offender Treatment

Title 22, Part 36

TRD-200206465
Filed: October 8, 2002

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Texas State Board of Social Worker Examiners

Title 22, Part 34

TRD-200206460
Filed: October 7, 2002

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State Board of Examiners for Speech-Language Pathology and Audiology

Title 22, Part 32

TRD-200206443
Filed: October 4, 2002

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Statewide Health Coordinating Council

Title 25, Part 6

TRD-200206418
Filed: October 3, 2002

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Toxic Substances Coordinating Committee

Title 25, Part 14

TRD-200206422
Filed: October 3, 2002

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Proposed Rule Review

Teacher Retirement System of Texas

Title 34, Part 3

The Teacher Retirement System of Texas (TRS) files this notice of intention to review Title 34, Part 3, Texas Administrative Code, Chapter 41 (Insurance Programs), Chapter 43 (Adjudicative Hearings), Chapter 47 (Qualified Domestic Relations Orders), and Chapter 49 (Collection of Debts). This review and consideration is in accordance with Government Code, §2001.39, added by Acts 1999, 76th Legislature, Chapter 1499, Article I, §1.11.

In accordance with the agency rule review plan filed with the Secretary of State on December 20, 2001, the Policy Committee of the Board of Trustees has conducted an initial review of Title 34, Part 3, Texas Administrative Code, Chapters 41, 43, 47, and 49. The review was conducted in an open meeting and included an assessment of whether the reason for adopting the rules continues to exist. Now that the initial review is completed by the Policy Committee, the full Board will review these Chapters to make a determination as to whether the reasons for adopting or readopting these rules continue to exist. The final review of these Chapters is anticipated to be completed at the Board meeting scheduled for December 19-20, 2002.

As part of this review process, TRS is proposing amendments to Chapters 41, 43, 47, and 49 as well as the addition of sections to Chapters 41 and 43. In addition, TRS is proposing repeals of some sections in Chapters 41 and 43. The proposed amendments, new sections and repeals are published elsewhere in this issue of the *Texas Register*.

TRS will accept comments on the requirement as to whether the reasons for adopting these sections continue to exist as well as comments filed on the proposed amendments, new sections and repeals published in this issue of the *Texas Register*.

All comments should be directed to Charles L. Dunlap, Executive Director Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698.

TRD-200206357
Charles L. Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: September 30, 2002

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Adopted Rule Review

Texas Department of Human Services

Title 40, Part 1

The Texas Department of Human Services (DHS) adopts the review of Title 40 TAC, Chapter 4, Medicaid Programs--Children and Pregnant Women; Chapter 5, Medicaid Programs for Aliens; Chapter 6, Disaster Assistance Program; Chapter 7, Refugee Cash Assistance and Medical Assistance Programs; Chapter 9, Refugee Social Services; Chapter 11, Food Distribution and Processing; Chapter 12, Special Nutrition Programs; and Chapter 13, Title IV-A Emergency Assistance Program; in accordance with the Government Code, §2001.039. The proposed notice of review was published in the August 30, 2002, issue of the *Texas Register* (27 TexReg 8247). No comments were received regarding the readoption of these chapters.

DHS has reviewed Chapters 4-7, 9, and 11-13, and determined that the initial reasons for adopting these chapters continue to exist. However, as a result of the rule review process, DHS determined to rewrite these chapters in plain language that is easier for the public to understand. Chapters 7 and 9 have been rewritten and proposed in previous issues of the *Texas Register*; the remaining chapters will be proposed in subsequent issues.

This concludes DHS's review of 40 TAC Chapters 4-7, 9, and 11-13, as required by the Government Code, §2001.039.

TRD-200206405
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: October 2, 2002

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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 issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Notice of Contract Amendment

Notice of Amendment: Pursuant to Chapter 403 and Chapter 2155, Section 2155.083, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of amendment of the existing contract between Global Payments Data, Inc. (Contractor) and the Comptroller.

Effective April 14, 2000, the Comptroller, and the Contractor entered into a contract for credit card processing and payment services. The initial term of the contract was from April 14, 2000 through August 31, 2002. The Comptroller issues this notice of renewal of the contract for the period from September 1, 2002 through August 31, 2003, and to increase fees payable under the contract. Total payments under the contract, are based on usage of the services under the contract based on the fees provided in the contract.

For further information, please contact: Pamela Ponder, Deputy General Counsel for Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 475-0498, fax: (512) 475-0973, or by e-mail at contracts@cpa.state.tx.us.

TRD-200206510
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: October 9, 2002

♦ ♦ ♦

Notice of Contract Award

Notice of Award: Pursuant to Chapter 2254, Chapter B, and Sections 403.011 and 403.020 Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract award.

The notice of request for proposals (RFP #144a) was published in the July 26, 2002, issue of the *Texas Register*, (27 TexReg 6734).

The consultant will assist Comptroller in conducting a management and performance review of the Houston Community College.

The contract was awarded to Gibson Consulting Group, Inc., 901 South Mopac Expressway, Suite 540, Austin, Texas 78746. The total amount of this contract is not to exceed $500,000.00.

The term of the contract is October 1, 2002 through May 31, 2003. The final report is due on or before March 6, 2003.

TRD-200206506
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: October 9, 2002

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 10/14/02- 10/20/02 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 10/14/02- 10/20/02 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200206461
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 8, 2002

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Texas Education Agency

Requests for Applications Concerning the Ninth Grade Success Initiative, Cycle 4, 2002-2003 and 2003-2004

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-03-002 from school districts, open-enrollment charter schools and shared services arrangements of eligible applicants which serve ninth grade students in order to increase graduation rates of public school students in Texas by reducing the disproportionately large percentage of students who are retained in ninth grade and the similarly large percentage of students who drop out of school at the ninth grade. A public school district must serve as the fiscal agent of a shared-services arrangement. Districts that were awarded Ninth Grade Success Initiative grant funds for their programs in Cycle 1, 1999-2000 and 2000-2001, through continuation grants for 2001-2002 and 2002-2003; Cycle 2, 2001-2002 and 2002-2003; or Cycle 3, 2002-2003 and 2003-2004, are not eligible to receive funding for Cycle 4.

Description. The objective of the Ninth Grade Success Initiative, 2002-2003 and 2003-2004, Cycle 4, is to fund programs, not to exceed 210 days of instruction, specifically designed for students in Grade 9 who are at risk of not earning or who have not earned sufficient credit to advance to Grade 10 and who fail to meet minimum skills levels established by the Commissioner of Education.

The criteria by which grants are awarded include the quality of the proposed program design, the school district's demonstrated need for the program, and the number of identified eligible students projected to be served. Three components of need will be considered: (1) the number of ninth graders not promoted to tenth grade; (2) the number of eligible ninth-grade students estimated to be served in the first term of implementation; (3) the number of eighth-grade students who failed one or more sections of the Texas Assessment of Academic Skills (TAAS) in

the last administration. The source documents for the required data will be the district/campus PEIMS reports for the 2001-2002 school year and the most recent district/campus Academic Excellence Indicator System (AEIS) reports. The amount of the grant awarded must also take into account funds distributed to the school district under Texas Education Code, Chapter 42, Foundation School Program. Grant funds may be used to create new programs, enhance existing programs, or expand existing programs.

Dates of Project. The Ninth Grade Success Initiative, 2002-2003 and 2003-2004, Cycle 4, will be implemented during the 2002-2003 and 2003-2004 school years. Applicants should plan for a starting date of no earlier than January 2, 2003, and an ending date of no later than August 31, 2004.

Project Amount. Funding will be provided for approximately 50 projects. Each project will receive funding for a two-year grant period in a range from $100,000 to $1,500,000. A school district may submit only one application but may include similar or different programs for multiple campuses within the district. Continued project funding in the second year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the projects. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-03-002 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Geraldine Kidwell, Division of Curriculum and Professional Development, TEA, (512) 463-9581.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, December 12, 2002, to be considered for funding.

TRD-200206525
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: October 9, 2002

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Texas Commission on Environmental Quality

Notice--Extension of Comment Period on the Proposed Revisions to 30 TAC Chapter 330, Municipal Solid Waste

In the October 11, 2002, issue of the *Texas Register* (27 TexReg 9665), the Texas Commission on Environmental Quality (commission) published a *Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 330*. The deadline date for written comments was submitted in error as November 12, 2002.

The commission has extended the deadline for receipt of written comments to 5:00 p.m., November 18, 2002, for the proposed revisions to 30 TAC Chapter 330.

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808 and should reference **Rule Log Number 2002-048-330-WS**. For further information on the proposed review, please contact Joe Thomas, Policy and Regulations Division, at (512) 239-4580.

TRD-200206455
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 7, 2002

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Notice of Availability and Request for Comments

AGENCIES: Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, Texas General Land Office, United States Department of the Interior (DOI), and National Oceanic and Atmospheric Administration (collectively the Trustees).

ACTION: Notice of availability of a draft restoration plan and environmental assessment for ecological injuries and service losses associated with the Bailey Waste Disposal Superfund Site (the Site), and of a 30-day period for public comment on the draft restoration plan and environmental assessment beginning October 18, 2002.

SUMMARY: Notice is hereby given that the "Restoration Plan and Environmental Assessment for the Bailey Waste Disposal Site, Orange County, Texas" (Draft RP/EA) is available for public review and comment. The Draft RP/EA has been prepared by the Trustees to address natural resource injuries and resource service losses attributed to releases of hazardous substances from the Site. The Draft RP/EA presents the Trustees' proposed plan to compensate for those losses by restoring ecological resources and services. The Trustees will consider comments received during the public comment period before finalizing the RP/EA for these ecological losses.

The opportunity for public review and comment on the Draft RP/EA is required under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), §111(i), 42 United States Code (USC), §9611(i) and parallel provisions in 43 Code of Federal Regulations (CFR) §11.32(c) and §11.81, of DOI's natural resource damage assessment regulations promulgated under CERCLA.

To receive a copy of the Draft RP/EA, interested members of the public are invited to contact Richard Seiler at the Texas Commission on Environmental Quality, Remediation Division, MC 142, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2523 or (512) 239-4814 (fax).

DATES: Comments must be submitted in writing on or before *November 18, 2002* to Mr. Seiler at the address listed previously. The Trustees will consider all written comments prior to finalizing the Draft RP/EA.

SUPPLEMENTARY INFORMATION: The Site is an inactive waste disposal facility situated within a tidal marsh along the Neches River,

approximately three miles southwest of Bridge City in Orange County, Texas. The Site encompasses a total of approximately 280 acres, including two rectangular ponds that were originally constructed in the early 1950's for recreational fishing as part of the Bailey Fish Camp. The Site is surrounded by salt marsh wetlands that are part of the productive Sabine Lake/Neches River estuarine ecosystem.

Industrial (e.g., sludge from local petrochemical industries) and municipal wastes were disposed at the Site beginning in the 1950's. Industrial waste disposal was discontinued in the late 1960's, but municipal and construction wastes were accepted until about 1971. Wastes were deposited in a series of pits that were excavated along the levees of one of the ponds.

In 1986, the United States Environmental Protection Agency (EPA) added the Site to the national priorities list based on the release or threatened release of hazardous substances, making it a priority Site for investigation and potential cleanup under CERCLA. The Remedial Investigation/Feasibility Study (RI/FS) for the Site was completed in 1988 and confirmed the presence of CERCLA-designated hazardous substances along the Site's levees, including a wide variety of volatile organic compounds (e.g., ethylbenzene, styrene, benzene), polycyclic aromatic hydrocarbons, and heavy metals (e.g., lead, arsenic, copper, cadmium, chromium, zinc).

In June 1988, the EPA issued a Record of Decision (ROD) which selected a remedy requiring *in-situ* stabilization of identified wastes. Implementation of the remedy began in 1993. The ROD was amended twice in 1996, in part to address hazardous wastes discovered to have migrated from a waste pit in the Site's north levee into an area of adjacent marsh. Under these amendments, contaminated sediments from this area were removed for off-site disposal. The final remedy also included waste consolidation; grading and capping within the Site's waste areas; installation of controls to manage and treat storm water runoff; and adjustments to dike elevations and slopes. All on-site remedial construction activities were completed by August 1997.

The remedy selected to address the contamination at the Site is expected to protect natural resources in the vicinity of the Site from further or future harm and to allow natural resources to return to pre-injury or baseline conditions within a reasonable period of time. These actions, however, did not address or otherwise seek to compensate the public for any natural resource injuries or losses caused by the Site contamination, particularly any losses or reductions in resource services pending recovery or losses caused by the remedy undertaken.

The Trustees are designated natural resource trustees under CERCLA, §107(f); Federal Water Pollution and Control Act, §311; 33 USC§ 1321; and other applicable federal or state laws, including National Oil and Hazardous Substances Pollution Contingency Plan, Subpart G, 40 CFR §§300.600 - 300.615. The Trustees are authorized to act on behalf of the public under these authorities to protect and restore natural resources injured or lost as a result of discharges or releases of hazardous substances.

Parallel with performance of the RI/FS, the Trustees undertook an assessment of the natural resource injuries and service losses attributable to hazardous substances at the Site. The assessment focused on natural resource injuries or service losses of an ecological nature caused by the hazardous substances at the Site based on known contamination and anticipated response actions.

The Draft RP/EA summarizes the Trustees' assessment of those resource injuries and restoration-based compensation requirements, the September 2000 natural resource damages settlement addressing these losses, and the objective of restoration under this Draft RP/EA. Based on that assessment, settlement, and restoration objective, the Draft RP/EA identifies the restoration actions which are proposed for use to restore, replace, or acquire equivalent resources or services to compensate the public for the resource losses attributed to the Site.

For further information, contact Richard Seiler at (512) 239-2523, e-mail: rseiler@tceq.state.tx.us.

TRD-200206470
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 8, 2002

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Notice of Availability and Request for Comments on a Proposed Draft Natural Resource Damages Restoration Plan

AGENCIES: Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, Texas General Land Office, and United States Fish and Wildlife Service of the Department of the Interior (collectively the Natural Resource Trustees).

ACTION: Notice of Availability of a proposed draft restoration plan and environmental assessment (Draft Plan) for injuries to natural resources from releases of hazardous substances at the Koppers Texarkana National Priority List site and a 30-day period for public comment on this document beginning October 18, 2002.

SUMMARY: Notice is hereby given that a proposed Draft Plan to be used in the resolution of the Natural Resource Trustees' claim for natural resource damages at the Site, is available for public review and comment. This document has been prepared by the Natural Resource Trustees in conjunction with Beazer East, Inc. (Beazer) to address injuries or potential injuries to natural resources and the services they provide as a result of releases of hazardous substances at or from the former Koppers Texarkana Wood Preserving Facility in Texarkana, Bowie County, Texas. The Draft Plan describes potential injuries related to the Site and identifies a preferred restoration alternative that once implemented would resolve Beazer's liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for potential injuries to natural resources and the ecological services they provide.

The opportunity for public review and comment on the proposed Draft Plan announced in this notice is required under CERCLA.

SUPPLEMENTARY INFORMATION: The Site is a former wood treatment facility that began operation in 1910. It is located approximately one mile west of downtown Texarkana, Bowie County, Texas. Waggoner Creek is located immediately adjacent to the Site and forms its western boundary.

On April 16, 1984, The Texas Department of Water Resources (now the Texas Commission on Environmental Quality) recommended to the United States Environmental Protection Agency (EPA) that the Site be placed on the national priority list (NPL). The EPA concurred and the Site was proposed for placement on the NPL on October 15, 1984. The Site was subsequently added to the NPL on June 10, 1986.

The Natural Resource Trustees determined that a natural resource damage assessment was appropriate due to potential injuries to aquatic and biological natural resources, as a result of surface water runoff and groundwater discharges into Waggoner Creek and an on-site pond. A cooperative assessment of injuries or potential injuries to natural resources was jointly performed by the Natural Resource Trustees and Beazer.

The cooperative assessment determined that the quantity and concentration of the release of hazardous materials at or from the site resulted

in injury or potential injury to natural resources. The Draft Plan describes the compensatory restoration project proposed to compensate the public for lost ecological services identified in the cooperative damage assessment. Details of the injury assessment and the review of potential restoration options are outlined in the Draft Plan.

The identified preferred restoration alternative would compensate for potential injuries to water quality and aquatic habitats through the preservation of a 56.5 acre parcel on land located on Howard Creek, approximately 1.8 miles south of the Site. The property contains extensive wetland, pond, riparian hardwood forest, and upland pine forest habitats, which support numerous species of aquatic fauna, birds, mammals, reptiles, and amphibians. The ecological services provided by the property will be preserved in perpetuity through the placement of a conservation easement.

To receive a copy of the proposed Draft Plan, interested members of the public are invited to contact Charles Brigance of the Texas Commission on Environmental Quality, Remediation Division, MC 142, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2238, or at *cbriganc@tceq.state.tx.us*.

The Draft Plan may also be reviewed at the Bowie County Public Library in Texarkana, Texas or on the Texas Commission on Environmental Quality Natural Resource Trustee Program website at *www.tceq.state.tx.us/permitting/remed/site/nrt.*

DATES: Comments must be submitted in writing on or before 5:00 p.m. on November 18, 2002, to Mr. Brigance at the address listed previously. The Natural Resource Trustees will consider all written comments prior to finalizing the proposed Draft Plan.

Issued in Austin, Texas on October 18, 2002.

TRD-200206467
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 8, 2002

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Notice of District Petition

Notices mailed during the period October 2, 2002 through October 8, 2002.

TCEQ Internal Control No. 09132002-D03; Two Way Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert Two Way Water Supply Corporation to Two Way Special Utility District (District) and to transfer Certificate of Convenience and Necessity (CCN) No. 11085 from Two Way Water Supply Corporation to Two Way Special Utility District. Two Way Special Utility District's business address will be: 2535 Hwy. 82E. Suite A2, Whitesboro, Texas 76273. The petition was filed pursuant to Chapters 13 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TCEQ. The proposed District is located in Grayson and Cooke Counties and will contain approximately 128 square miles. The territory to be included within the proposed District includes all of the singly certified service area covered by CCN No. 11085. CCN No. 11085 will be transferred after a positive confirmation election.

TCEQ Internal Control No. 07242002-D08; Cypress Ranch, Ltd. (Petitioner) filed a petition for creation of Cypress Ranch Water Control and Improvement District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Bank One, N.A., on the land to be included in the proposed District, and Bank One, N.A. has consented to the petition; (3) the proposed District will contain approximately 429.969 acres located within Travis County, Texas; and (4) the proposed District is not within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $24,000,000.

TCEQ Internal Control No. 07182002-D03; Richfield Ranch Investments LP, (Petitioner) filed a petition for creation of Harris County Municipal Utility District Number 375 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder on land to be included in the proposed District that has consented to the petition; (3) the proposed District will contain approximately 600.752 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and is not within the corporate limits or extraterritorial jurisdiction of any other city. By City of Houston, Texas, Ordinance No. 2002-488, effective June 18, 2002, the City of Houston gave its consent to create the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, that the cost of the project is estimated to be approximately $45,000,000.

TCEQ Internal Control No. 07172002-D03; Richfield Ranch Investments LP, (Petitioner) filed a petition for creation of Harris County Municipal Utility District Number 376 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder on land to be included in the proposed District that has consented to the petition; (3) the proposed District will contain approximately 329.419 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and is not within the corporate limits or extraterritorial jurisdiction of any other city. By City of Houston, Texas, Ordinance No. 2002-489, effective June 18, 2002, the City of Houston gave its consent to create the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, that the cost of the project is estimated to be approximately $14,830,000.

TCEQ Internal Control No. 06052002-D03; North Hardin Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert North Hardin Water Supply Corporation to North Hardin Special Utility District (District) and to transfer Certificate of Convenience and Necessity (CCN) No. 11267 from North Hardin Water Supply Corporation to North Hardin Special Utility District. North Hardin Special Utility District's business address will be P.O. Box 55, Silsbee, Texas, 77656. The petition was filed pursuant to Chapters 13 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TCEQ. The proposed District is located in Hardin County,

Texas, and will contain approximately 34.59 square miles. The territory to be included within the proposed District includes all of the singly certified service area covered by CCN No. 11267. CCN No. 11267 will be transferred after a positive confirmation election.

TCEQ Internal Control No. 07172002-D01; Richfield Ranch Investments LP, (Petitioner) filed a petition for creation of Harris County Municipal Utility District Number 377 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder on land to be included in the proposed District that has consented to the petition; (3) the proposed District will contain approximately 504.719 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and is not within the corporate limits or extraterritorial jurisdiction of any other city. By City of Houston, Texas, Ordinance No. 2002-490, effective June 18, 2002, the City of Houston gave its consent to create the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, that the cost of the project is estimated to be approximately $31,520,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on these petitions if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petitions unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, 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 TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200206512
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 9, 2002

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Notice of Water Rights Application

Notice mailed October 2, 2002.

APPLICATION NO. 8213A; The Colorado River Municipal Water District (CRMWD or District), P.O. Box 869, Big Spring, Texas 79721-0869, applicant, seeks to amend Temporary Water Use Permit No. 8213 pursuant to Texas Water Code 11.122 and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Temporary Water Use Permit No. 8213 authorizes CRMWD, for one year from the date of issuance of the permit, to use a 65 mile reach of the bed and banks of Segment 1426 of the Colorado River to convey stored water released from E.V. Spence Reservoir at Latitude 31.90 N and Longitude 100.51 W to existing and potential customers downstream of the reservoir and upstream of O.H. Ivie Reservoir at Latitude 31.50 N and Longitude 99.67 W. E.V. Spence Reservoir is in Coke County west of the City of Robert Lee and O.H. Ivie Reservoir is in Coleman, Concho and Runnels Counties. The amount of water released shall not exceed 38,573 acre-feet for municipal use, 2000 acre-feet for industrial use, and 1000 acre-feet for mining use for subsequent downstream diversion from the river. Applicant seeks to amend Temporary Water Use Permit No. 8213 by extending or deleting the expiration date of September 28, 2002. CRMWD has indicated that the primary purpose for the extension of the existing temporary permit is to allow the District to continue providing stored contract water to the City of Ballinger for municipal use. Initially CRMWD will release approximately 1,320 acre-feet of water at a rate of 1.56 CFS (700 GPM) from E. V. Spence Reservoir at Latitude 31.90 N and Longitude 100.51 W to be conveyed approximately 50 miles downstream to Khun Lake, approximately 7 miles west-southwest of Ballinger. This water will then be diverted from Kuhn Lake at a maximum rate of 1.56 cubic feet per second (700 gallons per minute) for use by the City of Ballinger. This application is not a request for an additional appropriation of water as all of the water released and subsequently diverted will be reported as being used as part of the District's water right for E.V. Spence Reservoir, authorized by Certificate of Adjudication No.14-1008, as amended. The application was received by the TCEQ on August 22, 2002. The Executive Director of the TCEQ reviewed the application and declared it to be administratively complete and accepted for filing on September 19, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by November 1, 2002.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to

the TCEQ 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, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200206511
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 9, 2002

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 25, 2002**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 25, 2002**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: City of Alice; DOCKET NUMBER: 2002-0451-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Number 262C; LOCATION: Alice, Jim Wells County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §37.131, by failing to provide continuous financial assurance for closure, post-closure, or corrective action; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(2) COMPANY: Husein Esmail dba Arcola Food Market; DOCKET NUMBER: 2002-0527- PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0790362; LOCATION: Arcola, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §290.39(c) and THSC, §341.035, by failing to obtain approval for the construction and specifications of the PWS system; PENALTY: $250; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Diamond Shamrock Refining Company, L.P.; DOCKET NUMBER: 2002- 0181-AIR-E; IDENTIFIER: Air Account Number MR-0008-T; LOCATION: Sunray, Moore County, Texas; TYPE OF FACILITY: petroleum refining; RULE VIOLATED: 30 TAC §101.6(a)(2) and (c) and THSC, §382.085(b), by failing to comply with upset reporting regulations; 30 TAC §§101.20(1), 116.115(b)(2)(F)(iii) and (c), and 116.160, New Source Review Permit Numbers 9914, 390, and 8636, 40 Code of Federal Regulations (CFR) §60.482-2(c)(1) and §60.482- 7(d)(1), and THSC, §382.085(b), by failing to repair nine leaking components, maintain opacity of emissions, operate the affected flares with no visible emissions, maintain the number two sulfur recovery unit incinerator firebox exit temperature, conduct monthly monitoring of volatile organic compounds, and make available monthly emission records; 30 TAC §§101.20(2), 113.230, and 116.115(c), NSR Permit Number 37205, 40 CFR §63.425(b) and §63.427(a), and THSC, §382.085(b), by failing to determine a monitored operating parameter value for the performance test of the vapor processing system and install, calibrate, certify, operate, and maintain a continuous monitoring system; 30 TAC §112.3(a) and THSC, §382.085(b), by failing to maintain a net ground level concentration of 0.4 parts per million by volume of sulfur dioxide; and 30 TAC §§290.51(a)(3), 305.503, and 320.21, by failing to pay outstanding public health service, water quality assessment, and wastewater treatment inspection fees; PENALTY: $149,125; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: Edsco Fasteners, Inc.; DOCKET NUMBER: 2002-0538-AIR-E; IDENTIFIER: Air Account Number DF-0667-K; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: metal product fabricating; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518, by failing to obtain authorization to operate a source of air emissions; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Equistar Chemicals, L.P.; DOCKET NUMBER: 2002-0863-AIR-E; IDENTIFIER: Air Account Number HG-0770-G; LOCATION: LaPorte, Harris County, Texas; TYPE OF FACILITY: petrochemical manufacturing; RULE VIOLATED: THSC, §382.085(a), by allowing unauthorized emissions by failing to re-open a control valve after maintenance; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Faurie's Food and Fuel, Incorporated; DOCKET NUMBER: 2002-0195-PWS- E; IDENTIFIER: PWS Number 0270122;l LOCATION: Briggs, Burnet County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c), by failing to collect routine bacteriological samples; 30 TAC §290.110(b)(4) and (c)(5)(B), by failing to maintain a residual disinfectant concentration of at least 0.2 milligrams per liter and conduct weekly tests of the disinfectant residual; 30 TAC §290.39(c) and THSC, §341.035, by failing to obtain approval before constructing a PWS system; 30 TAC §290.41(c)(3)(A), (B), (K), (N), and (O), by failing to obtain approval of well completion data before placing the

well into service, construct the well casing at least 18 inches above the natural surface, seal the wellhead, have a flow measuring device at the well, and enclose the well in an intruder-resistant fence; 30 TAC §290.42(e)(2), by failing to locate the disinfection point; 30 TAC §290.46(f)(3)(A)(i) and (ii), (r) and (v), by failing to maintain records of the annual pressure tank inspections, maintain daily records of chemical usage, maintain daily records of water production, provide at least 35 pounds per square inch (psi) of water pressure and enclose electrical wiring in conduit; 30 TAC §290.43(e), by failing to lock the building where the pressure tanks were housed; and 30 TAC §290.42(e)(7) and (i), by failing to lock the building where the hypochlorination solution was stored and use a disinfectant product that was approved by the American National Standards Institute/National Sanitation Foundation; PENALTY: $4,960; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(7) COMPANY: Garcia Grain Trading Corporation; DOCKET NUMBER: 2002-0836-AIR-E; IDENTIFIER: Air Account Number HN-0313-M; LOCATION: Progreso Lakes, Hidalgo County, Texas; TYPE OF FACILITY: grain storage and transfer plant; RULE VIOLATED: 30 TAC §116.116(b) and THSC, §382.085(b), by failing to obtain a permit amendment prior to varying from any representation or permit condition when the change will cause an increase in the emission rate of any air contaminant; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550- 5247, (956) 425-6010.

(8) COMPANY: Griffin Industries, Inc.; DOCKET NUMBER: 2002-0938-AIR-E; IDENTIFIER: Air Account Number HG-5394-A; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: waste grease transfer station; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by allegedly having emitted into the atmosphere air contaminants in such concentration and duration as to create an odor nuisance; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: HMW Special Utility District dba Kickapoo Farms Subdivision; DOCKET NUMBER: 2002-0455-PWS-E; IDENTIFIER: PWS Number 1011766 and Certificate of Convenience and Necessity Number 10342; LOCATION: Tomball, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and (iii), and THSC, §341.0315(c), by failing to provide the minimum total storage capacity of 200 gallons per connection and provide the minimum service pump capacity of two gallons per minute per connection; 30 TAC §290.46(m)(1)(B), by failing to inspect the pressure tank annually; and 30 TAC §290.93(3), by failing to provide a written planning report; PENALTY: $7,370; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Industrial Pipe and Plastics of Texas, Inc.; DOCKET NUMBER: 2002-0795- AIR-E; IDENTIFIER: Air Account Number KA-0041-H and General Operating Permit Number O- 01701; LOCATION: Karnes City, Karnes County, Texas; TYPE OF FACILITY: fiberglass tank and pipe manufacturing; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the annual Title V permit compliance certification; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Jesse Drury and Kim Drury dba Kim's Mini Mart; DOCKET NUMBER: 2002-0618-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 08594; LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(B), (5)(A)(i) and (C), and the Code, §26.346(a) and §26.3467(a), by failing to fully and accurately complete an underground storage tank (UST) registration and self-certification form, make available to a common carrier a valid, current delivery certificate, and physically label all tank fill pipes; 30 TAC §334.10(b)(1)(B), by failing to maintain complete and accurate records to verify that reconciliation of detailed inventory control is being conducted; and 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to conduct regular inspections of an impressed current cathodic protection system; PENALTY: $2,050; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: Lewis McCreary and Jeff Koricanek dba Koricanek Poultry Farm; DOCKET NUMBER: 2002-0550-AGR-E; IDENTIFIER: Enforcement Identification Number 17794; LOCATION: Shiner, Lavaca County, Texas; TYPE OF FACILITY: poultry farm; RULE VIOLATED: 30 TAC §321.31(b) and the Code, §26.121(a)(1), by failing to prevent a discharge of agricultural waste; and 30 TAC §321.33(f), by failing to apply for registration or individual permit for an existing animal feeding operation; PENALTY: $6,875; ENFORCEMENT COORDINATOR: Ed Moderow, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: Glenn Kothmann; DOCKET NUMBER: 2002-0796-EAQ-E; IDENTIFIER: Edwards Aquifer Protection Program Project Number 1757.00; LOCATION: Hondo, Medina County, Texas; TYPE OF FACILITY: residential subdivision construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to submit and receive approval of an Edwards Aquifer water pollution abatement plan; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: City of La Ward; DOCKET NUMBER: 2002-0789-MWD-E; IDENTIFIER: Water Quality Permit Number 13479-001; LOCATION: La Ward, Jackson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), and the Code, §26.121, by failing to operate the facility to maintain compliance with permitted effluent limits; and 30 TAC 305.125(9), by failing to notify the TCEQ in writing of effluent violations; PENALTY: $6,400; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(15) COMPANY: Manshack & Sons, Inc.; DOCKET NUMBER: 2002-0594-MLM-E; IDENTIFIER: Air Account Number OC-0216-V; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: sand pit; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(a), by failing to comply with the requirements for outdoor burning; and 30 TAC §330.5(a), by failing to receive authorization for the storage and disposal of MSW; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Morgan Oil Company; DOCKET NUMBER: 2002-0338-PST-E; IDENTIFIER: Enforcement Identification Number 17691; LOCATION: Douglass and Nacogdoches, Nacogdoches

County, Texas; TYPE OF FACILITY: transporter of petroleum products; RULE VIOLATED: 30 TAC §334.5(b)(1), by failing to ensure that the owner or operator of regulated USTs had a valid, current delivery certificate; PENALTY: $15,200; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Office Creek Corporation dba S & S Beer and Wine #3; DOCKET NUMBER: 2002-0585-PST-E; IDENTIFIER: PST Facility Identification Number 0068900; LOCATION: The Colony, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(3) and THSC, §382.085(b), by failing to successfully verify proper operation of the Stage II equipment; and 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate and ensure timely renewal of a previously issued UST delivery certificate; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Pilgrim's Pride Corporation; DOCKET NUMBER: 2002-0739-MWD-E; IDENTIFIER: Water Quality Permit Number 03759-000; LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: chicken hatchery; RULE VIOLATED: 30 TAC §305.125(1) and (5), and Water Quality Permit Number 03759-000, by failing to provide adequate maintenance of the treatment facilities, monitor the flow entering the wastewater treatment ponds, submit an annual report including the results of the total nitrogen loading and organic loading, collect representative soil samples annually, submit an annual report including the volume and quality of the wastewater used for irrigation, the acreage which has been irrigated, and the soil sampling results; PENALTY: $4,375; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: City of Poteet; DOCKET NUMBER: 2002-0769-PWS-E; IDENTIFIER: PWS Number 0070005; LOCATION: Poteet, Atascosa County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(A) and THSC, §341.035(a)(2) and (c), by failing to obtain final approval from the executive director prior to the use of well number nine as a source of public drinking water; 30 TAC §290.44(h)(1) and (4), by failing to assure that the public water facilities are protected from contamination and perform annual testing and certification of the backflow prevention assembly; 30 TAC 290.46(j), by failing to complete a customer service inspection certification; 30 TAC §290.43(e), by failing to maintain an intruder-resistant fence; and 30 TAC §290.109(c)(2)(A) and THSC, §341.033(d), by failing to collect an adequate number of monthly bacteriological samples from the distribution system; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: City of Rockwall; DOCKET NUMBER: 2002-0598-PST-E; IDENTIFIER: PST Facility Identification Numbers 0016731 and 0018013; LOCATION: Rockwall, Rockwall County, Texas; TYPE OF FACILITY: vehicle maintenance and fueling service center; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.346(a) and §26.3477(a), by failing to ensure that the UST registration and self-certification form was fully and accurately completed and make available a current, valid delivery certificate; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Alayne Furgurson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Shelbyville Independent School District; DOCKET NUMBER: 2002-0975- MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13370-001; LOCATION: Shelbyville, Shelby County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and §319.5(b), TPDES Permit Number 13370-001, and the Code, §26.121, by failing to comply with the permitted self-monitoring requirements for measurement frequency, prevent the discharge of floating solids, properly operate and maintain all systems of collection, treatment, and disposal, and notify the regional office within five days of becoming aware of the noncompliance, failing to discharge effluent in compliance with permitted effluent limitations, and comply with the permit limit for total suspended solids daily average; PENALTY: $8,125; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: BASN Corporation dba Swif-T Food Store; DOCKET NUMBER: 2002-0304- PST-E; IDENTIFIER: PST Facility Identification Number 0042957; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases; and 30 TAC §334.21(b) and §334.22(a), by failing to pay UST fees; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Gary Shipp, (806) 796-7092; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Texas Oil & Gathering, Inc.; DOCKET NUMBER: 2002-0800-MSW-E; IDENTIFIER: Used Oil Handler Registration Number A85525; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: used oil transfer, treatment, and storage; RULE VIOLATED: 30 TAC §§37.2011, 37.2015, and 324.22(c), by failing to provide an original financial assurance mechanism; PENALTY: $200; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-1105; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: U.S. Hanger Company, Inc.; DOCKET NUMBER: 2002-0087-AIR-E;l IDENTIFIER: Air Account Number BR-0016-K; LOCATION: Caldwell, Burleson County, Texas; TYPE OF FACILITY: fabricated metal products; RULE VIOLATED: 30 TAC §101.4, Air Permit Number 34572, and THSC, §382.085(b), by failing to properly operate and maintain air pollution abatement equipment; PENALTY: $3,125; ENFORCEMENT COORDINATOR: Salal Tahiri, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710- 7826, (254) 751-0335.

(25) COMPANY: United Petroleum Transports, Inc.; DOCKET NUMBER: 2002-0973-PST-E; IDENTIFIER: Enforcement Identification Number 17936; LOCATION: Big Spring, Howard County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator has a valid, current delivery certificate; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(26) COMPANY: Bettye Irby dba Wayne Irby Oil Company; DOCKET NUMBER: 2002-0385- PST-E; IDENTIFIER: Enforcement Identification Number 17751; LOCATION: Eola, Concho County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator has a valid, current delivery certificate; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Gary Shipp, (806) 796-7092; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(27) COMPANY: Woodbine Water Supply Corporation; DOCKET NUMBER: 2002-0861- PWS-E; IDENTIFIER: PWS Number 0490018; LOCATION: Gainesville, Cook County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(e)(6), by failing to provide proper ventilation for the chlorination rooms; 30 TAC §290.46(e)(2)(C), (f)(3)(D)(ii), (q)(1), and (r), and THSC, §341.033(a), by failing to employ at least two class "C" certified operators, maintain the results of inspections for all water storage and pressure maintenance facilities, adequately issue a boil water notice, and maintain a minimum pressure of 20 psi throughout the distribution system; 30 TAC §290.41(c)(3)(K) and (M), by failing to have the casing vent facing downward and provide a suitable sampling tap on the well; and 30 TAC §290.109(c)(2)(A)(iii) and THSC, §341.033(d), by failing to collect and submit routine monthly water samples; PENALTY: $2,938; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Worth I-10 Investments, L.P.; DOCKET NUMBER: 2002-0733-EAQ-E; IDENTIFIER: Enforcement Identification Number 17989; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: commercial development site; RULE VIOLATED: 30 TAC §213.23(a)(1)(A) and (B), by failing to submit a contributing zone plan and obtain approval of the plan; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200206464
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 8, 2002

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

Deadline: Personal Financial Statement due February 11, 2002

Stella M. Morrison, 4231 Lakeshore Dr., Port Arthur, Texas 77642

Robert H. Mendoza, P.O. Box 5566, Brownsville, Texas 78523-5566

Paul Womack, P.O. Box 774, Georgetown, Texas 78627

Cynthia Newman, P.O. Box 2366, Prairie View, Texas 77446

Benny D. Blount, Rt. 7 Box 169, Paris, Texas 75462

Ben Dominguez II, 808 Travis, Suite 1404, Houston, Texas 77002

LeRoy F. Gillam, 13031 Abalone Way, Houston, Texas 77044-1829

Dan Gattis, P.O. Box 2856, Georgetown, Texas 78627

Jesse R. Molina, 1301 N. Houston St., Fort Worth, Texas 76106

Stephen Kyle Johnston, 678 Fawn Drive, Houston, Texas 77015

Said Abakoui, 1211 San Dario Ave., #302, Laredo, Texas 78040

Virgil W. Yanta, 140 Highway 46 W., Boerne, Texas 78006-8114

Janie Martinez Gonzalez, 162 Bradley, San Antonio, Texas 78211

Antonio F. San Roman, P.O. Box 972115, El Paso, Texas 79997

Edmond S. Maxon, 10422 Shadow Wood, Houston, Texas 77043

Darrell Grear, 1304 Red Oak St., Bryan, Texas 77803

Stanley D. Schaeffer Jr., 1600 W. Bedford, Dimmitt, Texas 79027

Thomas J. Wattley Jr. 1620 Kent St., Dallas, Texas 75203

David B. Wilson, 505 Melbourne, Houston, Texas 77022

William A. Dyson, 602 S. Hayes St., Apt. 15, Enid, Oklahoma 76703-6655

Gerry N. Crawford, Rt. 16 Box 2161, Lufkin, Texas 75901

Ray Waddell, P.O. Box 20133, Fort Worth, Texas 76102

David C. Pepperdine, 18051 Kelly Blvd., #110, Dallas, Texas 78660

Marianne Robbins, 900 Broken Feather, #373, Pflugerville, Texas 78660

Mary E. Miller, P.O. Box 197, Coppell, Texas 75019

Joe W. Swirczynski, 1803 S.E. 15th Street, Mineral Wells, Texas 76067

Robert W. Tate, 18081 Midway Rd., #175, Dallas, Texas 75287

Deadline: 8 Days Before An Election Report due March 4, 2002

Michael J. Warner, Texas Amusement Association PAC, P.O. Box 92167, Austin, Texas 78709

Deadline: Monthly MPAC Report due June 5, 2002

Jeffrey J. Benavidez, San Antonio Ironworkers PAC, 4318 Clark Ave., San Antonio, Texas 78223

Mark Wood, Houston Gay & Lesbian Political Caucus PAC, 1701 Hermann Dr. #3402, Houston, Texas 77004

Joseph J. Hummel, Arlington Professional Fire Fighters Assn. PAC, 706 E. Abram St., Arlington, Texas 76010

Don L. King, Sensitive Care PAC, 500 N. Akard St. #3960, Dallas, Texas 75201-6604

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

Deadline: Monthly MPAC Report due July 5, 2002

Jeffrey J. Benavidez, San Antonio Ironworkers PAC, 4318 Clark Ave., San Antonio, Texas 78223

Mark Wood, Houston Gay & Lesbian Political Caucus PAC, 1701 Hermann Dr. #3402, Houston, Texas 77004

Joseph J. Hummel, Arlington Professional Fire Fighters Assn. PAC, 706 E Abram St., Arlington, Texas 76010

Don L. King, Sensitive Care PAC, 500 N. Akard St. #3960, Dallas, Texas 75201-6604

Kathleen P. Batchelor, Bedford Leadership Forum, 23251 County Road 460, Mineola, Texas 75773-9799

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

Deadline: Semiannual GPAC Report due July 15, 2002

Michael J. Warner, Texas Amusement Association PAC, P.O. Box 92167, Austin, Texas 78709

TRD-200206431

Tom Harrison
Executive Director
Texas Ethics Commission
Filed: October 4, 2002

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Texas Department of Health

Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Lower Valley Imaging, El Paso, R26112; Jose F. Sotomayor, M.D., Houston, R26006; Daniel D. Le, M.D., P.A., Houston, R25351; Cedar Park Tech Chiropractic, Cedar Park, R24231; Nacogdoches Mobile X-Ray and EKG, Nacogdoches, R24018; Roentgen Services, Houston, R13224; George M. Burlingame, D.D.S., Bay City, R08664; Northwest Texas Healthcare System, Inc., Amarillo, R10050; C.E. Vanderholt, D.P.M., Beaumont, R11258; Palo Duro Animal Hospital, Inc., Canyon, R11989; Imaging Sales & Service, Inc., Fort Worth, R25856; LTSIP, Inc., Garland, R22477; All American Inspections, Inc., San Antonio, R06487; Electronic Drilling Control, Inc., Irving, R12091; Cosmetic Medical and Laser Centers, P.A., El Paso, Z01477.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200206484
Susan Steeg
General Counsel
Texas Department of Health
Filed: October 8, 2002

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Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to 25 Texas Administrative Code, §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Access Pharmaceuticals, Incorporated, Dallas, L05030; Quest Diagnostic, Inc., Irving, L01253.

The complaints allege that these licensees have failed to pay required annual fees. The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200206483
Susan Steeg
General Counsel
Texas Department of Health
Filed: October 8, 2002

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Notice of Request for Proposals for FY2004 Texas Department of Health Public Health Improvement Grants

The request for proposals (RFP) for the TDH Public Health Improvement Grants has been posted to the TDH website at www.tdh.state.tx.us/phimprovement . Interested parties may access the website to download the RFP. If you are unable to download the RFP or if you would like to receive a hard copy of the RFP, see program contact information below.

Background

These grants, originally called the TDH Innovation Grants, were created in 1999 by the 76th Texas Legislature (HB1676). This bill established the Permanent Fund for Children and Public Health using funds from the tobacco settlement. The intent of the grants is to improve public health infrastructure and outcomes at the community level. The grants are intended to bring about improvements to public health capacity and improve health status of the populations served, while developing best practices, which can be replicated across the state. No funds from these grants will be authorized to pay for direct health care services.

Categories of Grants and Eligible Applicants

Part I - Grants for developing and demonstrating cost-effective prevention and intervention strategies for improving public health outcomes. Eligible applicants include any person or other entity, public or private.

Part II - Grants to local communities to address disparities in health in minority populations. Eligible applicants include any county, municipality, public health district, or other political subdivision, including hospital districts in Texas.

Part III - Grants to local communities for provision of the essential public health services as outlined in Health and Safety Code, §121.0065. Eligible applicants include any county, municipality,

public health district, or other political subdivision, including hospital districts, in Texas.

Funds Available

Approximately $5,500,000 is expected to be available to fund projects in all three parts. TDH intends to fund about 20 projects, with approximately one third of the available grant funds awarded for proposals under each of the three parts. TDH has designated topics relating to TDH priority initiatives and will award preference points to applications addressing one of these initiatives. Additionally, approximately $400,000 will be available to fund one small rural project in each of the TDH Public Health Regional areas.

Timeline

October 3, 2002 (Request for Proposals Published);

December 3, 2002 (Screening Applications Due to TDH);

January 20, 2003 (Written Invitations to Submit a Full Application Mailed);

March 20, 2003 (Deadline for Submission of Full Application); and

May 15, 2003 (Written Notification of Selected Applicants).

Program Contact

All communications regarding this RFP must be addressed to Suzanne Sparks, Office of Public Health Practice, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756-3199; Fax: (512) 458-7407; E-mail: Suzanne.Sparks@tdh.state.tx.us.

TRD-200206485
Susan Steeg
General Counsel
Texas Department of Health
Filed: October 8, 2002

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Texas Higher Education Coordinating Board

Notice of Contract Award

Notice of Award: Pursuant to Chapter 2254, Chapter B, the Texas Higher Education Coordinating Board ("Board") announces this notice of consulting contract award.

The notice of request for offers was published in the July 26, 2002, issue of the *Texas Register* at (27 TexReg 6741).

The consultant will assist the Board in administrative oversight of the Centers for Teacher Education at institutions that are members of the Texas Association of Developing Colleges (TADC) by performing the following activities: (1) facilitate and coordinate a collaborative strategic planning process to involve TADC college administration in planning for collaborative distance education, upgrading of technology, curriculum development and redesign and improvement of ExCET preparation; (2) work in collaboration with the Board and TADC college administration to identify training needs of college faculty in the centers for teacher education in the areas related to distance education, curriculum development and improvement of ExCET preparation; (3) facilitate and coordinate college administration and faculty professional development workshops to meet areas of need for delivery of distance education, curriculum development and redesign and improvement of ExCET preparation; and (4) report progress in TADC teacher education enrollment, level of participation in the distance education program, successful student placements, and other evaluative measures.

The contract was awarded to: Texas Association of Developing Colleges, Inc., 1140 Empire Central, Suite 550, Dallas, TX 75247. The total amount of this contract is not to exceed $65,000.00.

The term of the contract is October 1, 2002 through August 31, 2003. Final reports for each phase of the project will be presented on the following schedule: Phase I- October 29, 2002; Phase II -- March 3, 2003; Phase III -- July 28, 2003.

TRD-200206515
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: October 9, 2002

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Texas Department of Housing and Community Affairs

Notice of Public Hearings - Community Services Block Grant and Community Food and Nutrition Program

The Community Services Block Grant Act (42 U.S.C.§9901 et seq.) and Texas Government Code, Sections 2306.092(11), 2105.053 and 2105.054, require public hearings on the intended use of federal block grant funds within Texas. The Texas Department of Housing and Community Affairs (TDHCA) will conduct three public hearings as part of the public information consultation and public hearing requirements for the Community Services Block Grant (CSBG), a federal block grant. The primary purpose of these hearings is to solicit public comment on proposed policies, method of distribution, and use program funds to operate the Community Services Block Grant (CSBG) and Community Food and Nutrition Program (CFNP) programs in Federal fiscal year (FFY) 2004 and 2005, should these funds become available.

A TDHCA representative will be present at each scheduled hearing to explain the planning process and to receive written and/or oral testimony from interested citizens and groups affected by CSBG and CFNP. Public hearings will be held as follows:

Monday, November 4, 2002, at the Harlingen Public Library, 410 76th Drive, Harlingen, Texas at 1 p.m.

Wednesday, November 6, 2002, at the City Council Chambers, 2 Civic Center Plaza, 2nd Floor, El Paso, Texas at 7 p.m.

Thursday, November 14, 2002 at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas, as part of the regularly scheduled TDHCA board meeting. Start time for this meeting will be published on the Department's website at www.tdhca.state.tx.us.

Items for comment at the public hearings include: 1) a proposed plan to ensure timely expenditure of annual CSBG grant allocations that may involve the Department's recapture of certain unexpended funds, and 2) a proposal to increase the maximum level of household income for CSBG eligibility determinations. At present, the maximum household income is 100% of the current poverty income guidelines. The proposal, if successful, would increase the maximum household income to 125% of the current poverty income guideline. An outline of these issues will be included in the Intended Use Report.

A copy of the Intended Use Report will be provided to all current CSBG and CFNP contractors on or after November 1, 2002. Other interested parties should request the report in writing from the Texas Department of Housing and Community Affairs, Community Affairs Division, P.O. Box 13941, Austin, Texas 78711-3941. The report will also be accessible from our website: www.tdhca.state.tx.us.

Comments on the intended use of CSBG and CFNP funds may be in the form of oral or written testimony at the public hearings, written testimony submitted to the address provided above, or via e-mail, dlang@tdhca.state.tx.us. TDHCA must receive all testimony by December 6, 2002.

Questions regarding the report may be directed to Dyna C. Lang, 512-475-3905, or in writing using any of the methods of contact listed in this notice. Individuals who require auxiliary aids or services for these meetings should contact Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least 2 days before the scheduled meeting.

TRD-200206520
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 9, 2002

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Houston-Galveston Area Council

Request for Proposals

REQUEST FOR PROPOSAL AND QUALIFICATIONS SUBMITTAL

FOR AN ADVERTISING AGENCY

The Houston-Galveston Area Council (H-GAC) of Harris County, Texas, is requesting proposals and qualifications submittals for an advertising agency to provide advertising and marketing services for the Mission Clean Air Campaign, Commute Solutions Program and the Metropolitan Transportation Plan Public Outreach Program. These programs serve the Houston-Galveston region classified as "Severe" nonattainment for ground-level ozone air pollution, which includes Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties.

A Pre-Proposal Conference is scheduled at **1:30 p.m. on Thursday, October 10, 2002**, at H-GAC offices. Submittals are due by **12 p.m. (noon) on Thursday, October 24, 2002**. Twelve (12) typewritten, bound/stapled and signed copies are required. Late proposals will **NOT** be accepted.

The Request for Proposal and Qualifications Submittal packet can be downloaded from the H-GAC Transportation Department Web site at **www.hgac.cog.tx.us/transportation/rfps.html**. Interested firms may also obtain the packet at the H-GAC offices at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, or by contacting Shelley A. Whitworth at 713-627-3200. All questions regarding the Request for Proposal must be made in writing, and can be sent to the attention of Shelley A. Whitworth by email to swhitworth@hgac.cog.tx.us, faxed to 713-993-4508, or mailed to the Houston-Galveston Area Council, P.O. Box 22777, Houston, TX 77227-2227.

TRD-200206429
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: October 4, 2002

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Request for Proposals

The Houston-Galveston Area Council solicits proposals to conduct a pilot educational program aimed at increasing the awareness and attractiveness of nursing as a career choice among middle school students in our region. This region includes Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Houston, Liberty, Matagorda, Montgomery, Walker, Waller, and Wharton Counties. A proposal is available to download at www.theworksource.org. Hard copies of the proposal package will be available for mail out beginning October 4, 2002. Proposals are due at H-GAC offices on or before 12:00 noon Central Daylight Time on October 18, 2002. H-GAC will not accept late proposals; there will be no exceptions.

Prospective bidders may contact Carol Kimmick at 713.627,3200 or ckimmick@theworksource.org or visit the web site to request a proposal package.

TRD-200206436
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: October 4, 2002

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Request for Proposals

REQUEST FOR PROPOSAL AND QUALIFICATIONS SUBMITTAL

FOR A PUBLIC RELATIONS AGENCY

The Houston-Galveston Area Council (H-GAC) of Harris County, Texas, is requesting proposals and qualifications submittals for a public relations agency to provide public relations services and public outreach for the Mission Clean Air Campaign, Commute Solutions Program and the Metropolitan Transportation Plan Public Outreach Program. These programs serve the Houston-Galveston region classified as "Severe" nonattainment for ground-level ozone air pollution, which includes Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties.

A Pre-Proposal Conference is scheduled at **1:30 p.m. on Thursday, October 10, 2002**, at H-GAC offices. Submittals are due by **12 p.m. (noon) on Thursday, October 24, 2002**. Twelve (12) typewritten, bound/stapled and signed copies are required. Late proposals will **NOT** be accepted.

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TRD-200206450
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: October 7, 2002

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by MOUNTAIN STATES INDEMNITY COMPANY. a foreign fire and/or casualty. The home office is in Albuquerque, New Mexico.

Application to change the name of THE NISSAN FIRE & MARINE INSURANCE COMPANY, LTD. to SOMPO JAPAN FIRE & MARINE INSURANCE COMPANY OF AMERICA, a foreign fire and/or casualty company. The home office is in New York, New York.

Application to change the name of TRI-STATE INSURANCE COMPANY to ESURANCE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is Tulsa, Oklahoma.

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-200206519
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 9, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Federated Mutual Insurance Company proposing to use rates for commercial automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting for all territories and classes: flex percentages +46 for Liability, +10 for Personal Injury Protection, +12 for Comprehensive, and +25 for Collision coverages under Commercial Auto, including Private Passenger types written under commercial auto policies; and +45 for Comprehensive and +20 for Collision coverages for Garagekeepers. This overall rate change is +13.7%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by November 4, 2002.

TRD-200206447
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 7, 2002

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Texas Lottery Commission

Instant Game No. 361 "Wild Turkey"

1.0 Name and Style of Game.

A. The name of Instant Game No. 361 is "WILD TURKEY". The play style is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 361 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 361.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $8.00, $10.00, $15.00, $20.00, $40.00, $100, $800, TURKEY SYMBOL, MOON SYMBOL, LEAF SYMBOL, PUMPKIN SYMBOL, WHEAT SYMBOL, CORN SYMBOL, CORNUCOPIA SYMBOL, PILGRIM SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 361 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$8.00	EIGHT$
$10.00	TEN$
$15.00	FIFTEEN
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$800	EIGHT HUND
TURKEY SYMBOL	TURKEY
MOON SYMBOL	MOON
LEAF SYMBOL	LEAF
PUMPKIN SYMBOL	PUMPKIN
WHEAT SYMBOL	WHEAT
CORN SYMBOL	CORN
CORNUCOPIA SYMBOL	CRNCOPI
PILGRIM SYMBOL	PILGRIM

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 361 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
EGT	$8.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $8.00, $10.00, $15.00, $20.00.

H. Mid-Tier Prize - A prize of $40.00 and $100.

I. High-Tier Prize - A prize of $800.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (361), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 361-0000001-000.

L. Pack - A pack of "WILD TURKEY" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000-004 will be on the top page, tickets 005-009 will be on the next page and so forth with tickets 245-249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements

of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WILD TURKEY" Instant Game No. 361 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WILD TURKEY" Instant Game is determined once the latex on the ticket is scratched off to expose seven (7) play symbols. If the player matches three symbols, the player will win the prize shown. If the player finds a turkey symbol the player will win the prize shown automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly seven (7) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly seven (7) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the seven (7) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the seven (7) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. No ticket will have four (4) or more like play symbols on a ticket.

C. No more than two pairs of identical play symbols will appear on a ticket.

D. No ticket will contain three (3) identical symbols and a "Turkey" symbol.

E. No more than one (1) "Turkey" symbol will appear on a winning ticket.

F. The "Turkey" symbol will only appear on winning tickets.

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD TURKEY" Instant Game prize of $1.00, $2.00, $4.00, $8.00, $10.00, $15.00, $20.00, $40.00, or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "WILD TURKEY" Instant Game prize of $800, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for

that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WILD TURKEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WILD TURKEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "WILD TURKEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,135,500 tickets in the Instant Game No. 361. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 361 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	1,236,493	8.20
$2.00	567,577	17.86
$4.00	202,710	50.00
$8.00	81,084	125.00
$10.00	40,542	250.00
$15.00	20,259	500.30
$20.00	20,283	499.70
$40.00	12,704	797.82
$100	5,686	1,782.54
$800	50	202,710.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.63. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 361 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 361, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200206438
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 4, 2002

♦ ♦ ♦

Instant Game No. 365 "Crossword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 365 is "CROSSWORD". The play style is "extended play puzzle".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 365 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 365.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and blackened square.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 365 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
	

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 365 - 1.2E

CODE	PRIZE
THR	$3.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $3.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $100 or $500.

I. High-Tier Prize - A prize of $5,000 or $35,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (365), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 124 within each pack. The format will be: 365-0000001-000.

L. Pack - A pack of "CROSSWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 000 will be shown on the front of the pack; the back of ticket 124 will be revealed on the back of the pack. Every other book will reverse, i.e., reverse order will be: the back of ticket 000 will be shown on the front of the pack and the front of ticket 124 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CROSSWORD" Instant Game No. 365 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CROSSWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 139 (one hundred thirty-nine) play symbols. The player must scratch off the "YOUR LETTERS" area to reveal 18 (eighteen) Letters. The player must then scratch the corresponding letters found tin the CROSSWORD puzzle. If the player scratches at least three (3) complete "words" in the CROSSWORD puzzle, the player will win the corresponding prize found in the Prize Legend. Letters combined to form a complete "word" must appear in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the CROSSWORD puzzle. Only letters within the CROSSWORD Puzzle that are matched with the YOUR LETTERS can be used to form a complete "word". The three (3) small letters outside the squares in the YOUR LETTERS area are for validation purposes and cannot be used to play CROSSWORD. In the CROSSWORD puzzle, every lettered square within an unbroken horizontal or vertical sequence must be matched with the YOUR LETTERS to be considered a complete "word". Words within words are not eligible for a prize. A complete "word " must contain at least three (3) letters. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. One hundred thirty-nine (139) possible Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have 139 (one hundred thirty-nine) possible Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 139 (one hundred thirty-nine) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 139 (one hundred thirty-nine) possible Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A ticket can only win once.

B. Adjacent tickets within a pack will not have identical patterns.

C. Each ticket consists of a Your Letters area and one Crossword Puzzle Grid.

D. The Crossword puzzle Grid will be formatted with at least 1,000 configurations (i.e. puzzle layouts not including words).

E. All Crossword Puzzle Grid configurations will be formatted within a grid that contains 11 spaces (height) by 11 spaces (width).

F. Each word will appear only once per ticket on the Crossword Puzzle Grid.

G. Each letter will only appear once per ticket in the YOUR LETTERS play area.

H. Each Crossword Puzzle Grid will contain the following: a) 4 sets of 3-letter words; b) 5 sets of 4-letter words; c) 3 sets of 5-letter words; d) 3 sets of 6-letter words; e) 1 set of 7-letter words; f) 2 sets of 8-letter words; g) 1 set of 9-letter words; h) 19 words per puzzle per ticket.

I. There will be a minimum of three (3) vowels in the YOUR LETTERS play area.

J. The length of words found in the Crossword Puzzle Grid will range from 3-9 letters.

K. Only words from the approved word list will appear in the Crossword Puzzle Grid.

L. You will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR LETTERS play area that matches a word in the Crossword Puzzle Grid.

M. Each Crossword Puzzle Grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted Crossword puzzles (i.e. the same grid), all "approved words" will appear in every logical (i.e. 3 letter word = 3 letter space) position, with regards to limitations caused by the actual letters contained in each word (i.e. will not place the word ZOO in a position that causes an intersecting word to require the second letter to be "Z", when in fact, there are no approved words with a "Z" in the second letter position).

N. No one (1) letter, with the exception of vowels, will appear more than nine (9) times in the Crossword Puzzle grid.

O. No ticket will match eleven (11) words or more.

P. Three (3) to ten (10) completed words will be revealed as per the prize structure.

Q. All non-winning tickets will contain a) one (1) completed word approximately 20% of the time; b) and two (2) completed words approximately 80% of the time.

R. Sixteen (16) to eighteen (18) YOUR LETTERS will open at least one (1) letter in the Crossword Puzzle Grid.

2.3 Procedure for Claiming Prizes.

A. To claim a "CROSSWORD" Instant Game prize $3.00, $5.00, $10.00, $20.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "CROSSWORD" Instant Game prize of $5,000 or $35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CROSSWORD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CROSSWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CROSSWORD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,851,875 tickets in the Instant Game No. 365. The approximate number and value of prizes in the game are as follows:

Figure 3: 16 TAC GAME NO. 365 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	924,545	6.33
$5	737,276	7.94
$10	140,462	41.66
$20	58,533	99.98
$100	9,493	616.44
$500	1,958	2,988.70
$5,000	29	201,788.79
$35,000	8	731,484.38

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.13. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 365 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 365, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

The following is a list of words approved by the Texas Lottery for use in this game:

ACE	CAR	GUT	MAT	POP	TIE
ACT	CAT	GUY	MAY	PRO	TIP
ADD	COB	HAM	MET	PRY	TOE
ADO	COW	HAT	MID	PUT	TON
AFT	COY	HAY	MIX	RAG	TOO
AGE	CRY	HEM	MOB	RAM	TOP
AGO	CUB	HEN	MOO	RAN	TOT
AHA	CUE	HER	MOP	RAP	TOW
AID	CUP	HIM	MUD	RAT	TOY
AIM	CUT	HIP	MUG	RAW	TRI
AIR	DAB	HIS	NAB	RAY	TRY
ALL	DAY	HIT	NAP	RED	TUB
ALP	DEN	HOE	NET	RIB	TUG
AMP	DEW	HOG	NEW	RIG	TWO
AND	DIG	HOP	NIL	RIM	URN
ANT	DIM	HOT	NOD	RIP	USE
ANY	DIP	HOW	NOR	ROT	VAN
APE	DOG	HUB	NOT	ROW	VAT
APT	DOT	HUE	NOW	RUB	VET
ARC	DRY	HUG	NUT	RUG	VIA
ARM	DUB	HUM	OAF	RUN	VIM
ART	DUO	HUT	OAK	RUT	WAG
ASH	DYE	ICE	OAR	RYE	WAX
ASK	EAR	INK	OAT	SAW	WAY
AWE	EAT	INN	ODD	SAY	WEB
AYE	EBB	IVY	OFF	SEA	WET
BAD	EGG	JAB	OIL	SEE	WHO
BAH	EGO	JAR	OLD	SET	WHY
BAN	ELK	JAW	ONE	SEW	WIG
BAR	END	JAY	OPT	SHY	WIT
BAT	ERA	JIG	ORE	SIP	YAK
BAY	EYE	JOB	OUR	SIR	YEN
BED	FAN	JOG	OUT	SIT	YES
BEE	FAR	JOY	OWE	SIX	YET
BEG	FEE	JUG	OWL	SKI	YOU
BET	FEW	KEY	OWN	SLY	ZAP
BID	FEZ	KID	PAN	SON	ZIP
BIG	FIR	KIN	PAR	SOW	ZOO
BIN	FIT	KIT	PAW	SPA	ABLE
BIT	FIX	LAB	PAY	SPY	ACHE
BOA	FOE	LAD	PEA	SUB	ACID
BOG	FOG	LAG	PEG	SUM	ACRE
BOW	FOR	LAP	PEN	SUN	AFAR
BOY	FOX	LAW	PEP	TAB	AHOY
BUD	FRY	LEE	PET	TAG	AIDE
BUG	FUN	LEG	PIE	TAN	AJAR
BUS	FUR	LET	PIG	TAP	AKIN
BUY	GAG	LOW	PIN	TAR	ALAS
CAB	GAP	MAD	PIT	TEA	ALIT
CAN	GEM	MAN	PLY	TEE	ALLY
CAP	GET	MAP	POD	TEN	ALOE

ALSO	BIKE	CELL	DATA	EPIC	FUSS
ALTO	BILL	CHAT	DATE	ETCH	GAIN
AMID	BIND	CHEF	DAWN	EVEN	GALA
ANEW	BIRD	CHIN	DAZE	EXAM	GAME
ANTE	BLOT	CHIP	DEAL	EXIT	GATE
ANTI	BLUE	CITE	DEAN	FACE	GAZE
APEX	BLUR	CITY	DECK	FACT	GEAR
AQUA	BOAT	CLAM	DEED	FADE	GIFT
ARCH	BODY	CLAW	DEEM	FAIL	GIRL
AREA	BOIL	CLAY	DEEP	FAIR	GIVE
ARID	BOLD	CLIP	DEER	FALL	GLAD
ATOM	BOLT	CLUB	DENT	FAME	GLEE
AUNT	BOND	CLUE	DESK	FARE	GLOW
AURA	BOOK	COAL	DIAL	FARM	GLUE
AUTO	BOON	COAT	DICE	FAST	GLUT
AVID	BOOT	COAX	DILL	FAWN	GNAT
AWAY	BOSS	CODE	DIME	FEAR	GOAL
AXIS	BOTH	COIL	DIRE	FEED	GOAT
AXLE	BOUT	COIN	DIRT	FEEL	GOLF
BABY	BOWL	COLD	DISH	FEET	GONE
BACK	BRAG	COLT	DISK	FILE	GOOD
BAIL	BRAN	COMB	DIVE	FILL	GOWN
BAIT	BRIM	CONE	DOCK	FILM	GRAB
BAKE	BROW	COOK	DOLL	FINE	GRAY
BALD	BUCK	COOL	DOME	FIRE	GREY
BALK	BULB	COPE	DONE	FISH	GRID
BALL	BULK	COPY	DOOR	FLAG	GRIN
BAND	BULL	CORD	DOVE	FLAP	GRIP
BANK	BUMP	CORE	DOWN	FLAT	GROW
BARE	BUNK	CORK	DRAW	FLAW	GULF
BARK	BUNT	CORN	DROP	FLEA	GULL
BARN	BUOY	COST	DRUM	FLEE	GULP
BASE	BURY	COVE	DUAL	FLEW	GUST
BASH	BUSH	COZY	DUCK	FLIP	HAIL
BASS	BUSY	CREW	DUCT	FLOW	HAIR
BATH	CAGE	CRIB	DUEL	FOAM	HALF
BEAD	CAKE	CROP	DUET	FOLD	HALL
BEAK	CALF	CROW	DULL	FOND	HALT
BEAM	CALL	CUBE	DUNE	FOOD	HAND
BEAN	CALM	CUFF	DUSK	FOOT	HARD
BEAR	CAMP	CURB	DUST	FORK	HARE
BEAU	CANE	CURE	DUTY	FORM	HARK
BEEF	CAPE	CURL	EACH	FORT	HARP
BEEP	CARD	CUTE	EARL	FOUR	HATS
BEET	CARE	CYAN	EARN	FREE	HAUL
BELL	CARS	DALE	EAST	FROG	HAVE
BELT	CART	DAMP	EASY	FROM	HAWK
BEND	CASE	DARE	ECHO	FUEL	HAYS
BENT	CASK	DARK	EDGE	FULL	HAZE
BEST	CAST	DART	EDIT	FUND	HAZY
BIAS	CAVE	DASH	ELSE	FUSE	HEAL

HEAR	JOIN	LIMB	MINE	OPEN	PURE
HEAT	JOKE	LIME	MINK	OPUS	PURR
HEEL	JOLT	LINE	MINT	OUCH	PUSH
HEIR	JUDO	LINK	MISS	OVAL	PUTT
HELD	JULY	LINT	MIST	OVEN	QUIP
HELP	JUMP	LION	MOAT	OVER	QUIT
HERB	JUNE	LIST	MOCK	OXEN	QUIZ
HERD	JUNK	LIVE	MODE	PACE	RACE
HERE	JURY	LOAD	MOLD	PACK	RACK
HERO	JUST	LOAF	MOOD	PACT	RAFT
HIDE	KEEN	LOAN	MOON	PAGE	RAGE
HIGH	KEEP	LOCK	MORE	PAID	RAID
HIKE	KEYS	LOFT	MOSS	PALE	RAIL
HILL	KICK	LONG	MOST	PALM	RAIN
HINT	KIND	LOOK	MOTH	PARK	RAKE
HIRE	KING	LOOP	MOVE	PART	RAMP
HIVE	KITE	LOUD	MUCH	PASS	RARE
HOAX	KNEE	LOVE	MULE	PAST	RATE
HOLD	KNIT	LUCK	MUST	PATH	READ
HOLE	KNOT	LULL	MYTH	PAVE	REAL
HOME	KNOW	LURE	NAIL	PAWN	REAR
HOOD	LACE	LURK	NAME	PEAK	REED
HOOK	LACK	LUTE	NARY	PEAL	REEF
HOOP	LADY	LYNX	NEAR	PEAR	REEL
HOPE	LAIR	MADE	NEAT	PEER	RELY
HOSE	LAKE	MAIL	NEED	PICK	RENT
HOST	LAMB	MAIN	NEON	PIER	REST
HOUR	LAMP	MAKE	NEST	PILE	RICE
HOWL	LAND	MALL	NEXT	PINE	RICH
HUGE	LANE	MALT	NICE	PINK	RIDE
HULA	LARD	MANY	NICK	PINT	RING
HULL	LARK	MARK	NINE	PIPE	RINK
HUNT	LASH	MARS	NODE	PITA	RIPE
HUSH	LAST	MASK	NONE	PITY	RISE
HYPE	LATE	MAST	NOOK	PLAN	RISK
ICON	LAVA	MATH	NOON	PLAY	ROAD
IDEA	LAWN	MAZE	NORM	PLEA	ROAM
IDLE	LAZY	MEAL	NOSE	PLOT	ROAR
INCH	LEAD	MEET	NOTE	PLOW	ROBE
INTO	LEAF	MELT	NOUN	PLUM	ROCK
IOTA	LEAK	MEMO	NUMB	PLUS	ROLE
IRIS	LEAN	MEND	OATH	POEM	ROLL
IRON	LEAP	MENU	OBEY	POLL	ROOF
ITCH	LEFT	MESH	OBOE	POND	ROOM
ITEM	LEND	MESS	OKAY	PONY	ROOT
JACK	LESS	MICE	ONCE	POOL	ROPE
JADE	LEVY	MILD	ONLY	POSE	ROSE
JAZZ	LIFE	MILE	ONTO	POSH	RUBY
JEEP	LIFT	MILK	ONUS	POST	RUDE
JEST	LIKE	MILL	ONYX	POUR	RUIN
JIVE	LILY	MIND	OOZE	PULL	RULE

RUNG	SMOG	TASK	TWIG	WINE	AFTER
RUSH	SNAP	TAXI	TWIN	WING	AGAIN
RUST	SNOW	TEAK	TYPE	WIPE	AGENT
SACK	SNUG	TEAM	UNDO	WIRE	AGILE
SAGE	SOAK	TEAR	UNIT	WISE	AGONY
SAKE	SOAP	TEEN	URGE	WISH	AGREE
SALE	SOAR	TELL	USED	WITH	AHEAD
SALT	SOCK	TEND	VAIL	WOLF	AISLE
SAME	SODA	TENT	VARY	WOOD	ALARM
SAND	SOFA	TERM	VASE	WOOL	ALBUM
SAVE	SOFT	TEST	VAST	WORD	ALERT
SCAN	SOIL	TEXT	VEAL	WORK	ALIAS
SCAR	SOLD	THAT	VENT	WORM	ALIBI
SEAL	SOLE	THAW	VERB	WORN	ALIEN
SEAM	SOLO	THEN	VERY	WRAP	ALIGN
SEAT	SOME	THEY	VEST	WREN	ALIKE
SEED	SONG	THIN	VETO	YARD	ALIVE
SEEK	SOON	THUS	VIEW	YARN	ALLEY
SEEM	SORE	TIDE	VINE	YAWN	ALLOT
SELF	SORT	TIDY	VISA	YEAR	ALLOW
SELL	SOUL	TIER	VOLT	YELL	ALLOY
SEMI	SOUP	TILE	VOTE	YOGA	ALOHA
SEND	SOUR	TILT	WADE	YOLK	ALONE
SENT	SOYA	TIME	WAGE	YORE	ALONG
SERF	SPAN	TINT	WAIT	YOUR	ALOOF
SHED	SPIN	TINY	WAKE	ZEAL	ALPHA
SHIN	SPOT	TIRE	WALK	ZERO	ALTER
SHIP	STAR	TOAD	WALL	ZEST	AMASS
SHOE	STAY	TOIL	WAND	ZINC	AMAZE
SHOP	STEM	TOLD	WANT	ZONE	AMBER
SHOW	STEP	TOLL	WARD	ZOOM	AMIGO
SHUT	STEW	TONE	WARM	ABATE	AMINO
SICK	STIR	TOOL	WARN	ABIDE	AMISS
SIDE	STOP	TOSS	WARY	ABODE	AMONG
SIFT	SUCH	TOUR	WASH	ABOUT	AMPLE
SIGN	SUIT	TOWN	WATT	ABOVE	AMUSE
SILK	SURE	TRAP	WAVE	ABUSE	ANGER
SILO	SURF	TRAY	WEAK	ABYSS	ANGLE
SING	SWAN	TREE	WEAR	ACORN	ANGST
SINK	SWAT	TRIM	WEEK	ACTOR	ANKLE
SIZE	SWIM	TRIO	WEEP	ACUTE	ANNEX
SKEW	TACK	TRIP	WELD	ADAGE	ANNOY
SKIM	TACT	TROT	WELL	ADAPT	ANTIC
SKIN	TAIL	TRUE	WEST	ADEPT	ANVIL
SKIP	TAKE	TUBE	WHAT	ADIEU	APART
SKIS	TALE	TUCK	WHEN	ADIOS	APPLE
SLAP	TALK	TUNA	WHIM	ADMIT	APPLY
SLED	TALL	TUNE	WIDE	ADOPT	APRON
SLIM	TAME	TURF	WIFE	ADORE	ARENA
SLIP	TANK	TURN	WILD	ADULT	ARGUE
SLOW	TAPE	TUSK	WIND	AFFIX	ARISE

ARMOR	BIRDS	CABIN	CLOSE	DOZEN	FLEET
AROMA	BISON	CABLE	CLOTH	DRAFT	FLOAT
ARRAY	BLACK	CACHE	CLOUD	DRAIN	FLOCK
ARROW	BLAME	CADET	CLOWN	DRAMA	FLOOR
ASCOT	BLAND	CAMEL	CLUES	DREAM	FLORA
ASHES	BLANK	CAMEO	COACH	DRESS	FLOSS
ASIDE	BLARE	CANAL	COAST	DRIFT	FLOUR
ASPEN	BLAST	CANDY	COBRA	DRIVE	FLUID
ASSET	BLAZE	CANOE	COMET	DWELL	FLUTE
ATLAS	BLEND	CARGO	COMIC	EAGLE	FOCUS
ATOLL	BLIND	CARRY	CONGA	EARLY	FORAY
ATTIC	BLINK	CARVE	CORAL	EARTH	FORCE
AUDIO	BLITZ	CATCH	COUCH	EIGHT	FOUND
AUDIT	BLOCK	CAUSE	COUNT	ELBOW	FRAIL
AVAIL	BLOOM	CEASE	COURT	EMCEE	FRAME
AVERT	BLUFF	CEDAR	COVER	EMPTY	FRANK
AVOID	BLUNT	CELLO	CRAFT	ENACT	FRESH
AWAIT	BLUSH	CHAIN	CRANE	ENJOY	FRONT
AWAKE	BOARD	CHAIR	CRATE	ENTER	FROST
AWARD	BOAST	CHALK	CRAVE	ENTRY	FROWN
AWARE	BONUS	CHAOS	CRAWL	ENVOY	FRUIT
AWASH	BOOST	CHARM	CREEK	EQUAL	FUNNY
AWFUL	BOOTH	CHART	CREST	ERASE	GAMES
AWOKE	BOUND	CHASE	CRISP	ERODE	GIANT
AXIOM	BRACE	CHEAP	CROWD	ERROR	GIVEN
AZURE	BRAID	CHECK	CROWN	ESSAY	GLARE
BACON	BRAIN	CHEER	CRUSH	EVADE	GLASS
BADGE	BRAKE	CHESS	CRUST	EVENT	GLAZE
BAGEL	BRAND	CHIEF	CURVE	EVERY	GLITZ
BAKER	BRASS	CHILD	CYCLE	EXACT	GLOBE
BANJO	BRAVE	CHILI	DAILY	EXIST	GLOOM
BARGE	BRAVO	CHILL	DAIRY	EXTRA	GLORY
BARON	BRAWN	CHIME	DAISY	FABLE	GLOSS
BASIC	BREAD	CHIRP	DANCE	FACET	GLOVE
BASIL	BREAK	CHORD	DEBIT	FAINT	GOING
BASIN	BREED	CHORE	DECAL	FAULT	GOOSE
BASIS	BRIAR	CHUTE	DECOY	FAUNA	GORGE
BATCH	BRICK	CIDER	DELAY	FEAST	GRACE
BATON	BRIEF	CIVIC	DELTA	FEIGN	GRADE
BAYOU	BRING	CIVIL	DENIM	FEMUR	GRAIN
BEACH	BROOK	CLAIM	DEPOT	FENCE	GRAND
BEARD	BROOM	CLASH	DEPTH	FETCH	GRANT
BEECH	BROWN	CLASS	DEUCE	FEVER	GRAPE
BEGIN	BRUSH	CLEAN	DIARY	FIELD	GRAPH
BEIGE	BUDDY	CLEAR	DIGIT	FINAL	GRASP
BEING	BUDGE	CLERK	DINER	FLAGS	GRASS
BELOW	BUGLE	CLICK	DISCO	FLAIR	GRAVY
BENCH	BUILD	CLIFF	DITCH	FLAKE	GREAT
BERET	BUILT	CLIMB	DODGE	FLAME	GREEN
BERRY	BUNCH	CLOAK	DOUBT	FLARE	GREET
BIRCH	BURST	CLOCK	DOUGH	FLASH	GRILL

GRINS	IVORY	LODGE	NATAL	PEALS	PUTTY
GROAN	JAUNT	LOGIC	NERVE	PEARL	QUAIL
GROOM	JEANS	LOOSE	NEVER	PECAN	QUAKE
GROUP	JELLY	LOYAL	NEWER	PEDAL	QUART
GUARD	JEWEL	LUCKY	NICHE	PENNY	QUEEN
GUESS	JOIST	LUNAR	NIECE	PETAL	QUERY
GUEST	JOKER	LUNCH	NIGHT	PETTY	QUEST
GUIDE	JOLLY	LYRIC	NINES	PHASE	QUEUE
HABIT	JOUST	MAUVE	NINTH	PHONE	QUICK
HANDS	JUDGE	MAYBE	NOBLE	PHOTO	QUIET
HANDY	JUICE	MAYOR	NOBLY	PIANO	QUILL
HAPPY	JUMBO	MEDAL	NOISE	PIECE	QUILT
HARDY	JUROR	MEDIA	NOISY	PILOT	QUIRK
HASTE	KARAT	MELON	NOMAD	PINCH	QUITE
HATCH	KAYAK	MERCY	NORTH	PINTO	QUITS
HEARD	KNACK	MERGE	NOVEL	PITCH	QUOTA
HEART	KNEAD	MERIT	NUDGE	PIVOT	QUOTE
HEAVY	KNOCK	MERRY	NURSE	PIXEL	RADAR
HEDGE	KOALA	MESSY	NYLON	PIZZA	RADIO
HELLO	LABEL	METAL	OASIS	PLACE	RAISE
HINGE	LACES	METER	OCCUR	PLAID	RALLY
HIPPO	LADLE	MIDST	OCEAN	PLAIN	RANCH
HITCH	LAKES	MIGHT	OFFER	PLANE	RANGE
HOBBY	LAMBS	MILKY	OFTEN	PLANK	RAPID
HONEY	LAPEL	MIMIC	OLIVE	PLANT	RATIO
HONOR	LAPSE	MINCE	ONION	PLATE	RAVEN
HORSE	LARGE	MINED	OPERA	PLUMB	RAZOR
HOTEL	LASER	MINES	OPTIC	PLUME	REACH
HOUND	LATCH	MINOR	ORBIT	PLUSH	REACT
HOUSE	LATER	MIRTH	ORDER	PLUTO	READY
HUMAN	LAUGH	MITER	OTHER	POINT	RECAP
HUMID	LAYER	MIXED	OTTER	POLAR	REFER
HUMOR	LEAFY	MODEM	OUGHT	POLKA	REGAL
HUNCH	LEARN	MOIST	OUNCE	POPPY	REIGN
HURRY	LEASE	MONEY	OUTDO	PORCH	RELAX
HUTCH	LEASH	MONTH	OZONE	POUCH	RELAY
HYDRO	LEAST	MOODY	PAILS	POUND	RELIC
HYPER	LEAVE	MOOSE	PAINT	POWER	RENEW
IDEAL	LEDGE	MOTOR	PALMS	PRESS	REPLY
IDEAS	LEGAL	MOTTO	PANDA	PRICE	RESET
IGLOO	LEMON	MOUSE	PANEL	PRIDE	RETRY
IMAGE	LEVEL	MOUTH	PAPER	PRIME	REUSE
IMPLY	LEVER	MOVER	PARCH	PRINT	RHINO
INDEX	LIGHT	MOVIE	PARTY	PRIOR	RHYME
INFER	LILAC	MUDDY	PASTA	PRISM	RIDGE
INNER	LIMIT	MUNCH	PASTE	PRIZE	RIGHT
INPUT	LINEN	MURAL	PATCH	PROOF	RINSE
IRATE	LINGO	MUSIC	PATIO	PROSE	RISEN
IRONY	LIVID	NACHO	PAUSE	PROUD	RIVAL
ISSUE	LOBBY	NAIVE	PEACE	PUPIL	RIVER
ITEMS	LOCAL	NASAL	PEACH	PURSE	ROAST

ROBIN	SHINE	SPACE	STUDY	TODAY	USURP
ROBOT	SHIRT	SPARE	STUFF	TOKEN	UTTER
RODEO	SHOAL	SPARK	STUNT	TOOTH	VAGUE
ROTOR	SHOCK	SPEAK	STYLE	TOPIC	VALET
ROUGH	SHOES	SPEAR	SUAVE	TORCH	VALID
ROUND	SHORE	SPEED	SUEDE	TOTAL	VALOR
ROUTE	SHORT	SPELL	SUGAR	TOTEM	VALUE
ROYAL	SHRED	SPICE	SUITE	TOUCH	VALVE
RULES	SHRUB	SPIKE	SUNNY	TOUGH	VAPOR
RURAL	SIEGE	SPILL	SUPER	TOWEL	VAULT
SALAD	SIGHT	SPLIT	SURGE	TOWER	VENOM
SALON	SINCE	SPOIL	SWAMP	TOXIC	VENUE
SALVE	SINUS	SPOOL	SWARM	TRACE	VENUS
SATIN	SIREN	SPOON	SWEAT	TRACK	VERGE
SAUCE	SKATE	SPORT	SWEEP	TRADE	VERSE
SAUNA	SKIED	SPOUT	SWEET	TRAIL	VIDEO
SCALD	SKIES	SPRAY	SWIFT	TRAIN	VILLA
SCALE	SKILL	SQUAD	SWING	TRAIT	VINYL
SCARF	SLACK	SQUID	SWIRL	TRASH	VISIT
SCENE	SLANG	STACK	SWOON	TREAT	VISOR
SCENT	SLANT	STAFF	SYRUP	TREND	VITAL
SCOFF	SLASH	STAGE	TABLE	TRIAL	VIVID
SCOLD	SLATE	STAIN	TANGO	TRIBE	VOCAL
SCOOP	SLEEK	STAIR	TASTE	TRICK	VOGUE
SCOOT	SLEEP	STAKE	TEACH	TROOP	VOICE
SCORE	SLICE	STAMP	TEETH	TROUT	VOTER
SCOUT	SLICK	STAND	TEMPO	TRUCE	WAGON
SCRAP	SLIDE	STARE	TEMPT	TRUCK	WAIST
SCRUB	SLOOP	START	TENOR	TRUNK	WALTZ
SCUBA	SLOPE	STATE	TENSE	TRUST	WASTE
SEIZE	SMALL	STEAK	THANK	TRUTH	WATCH
SENSE	SMART	STEAM	THEIR	TULIP	WATER
SERVE	SMELL	STEEL	THEME	TWEAK	WAVER
SEVEN	SMILE	STEEP	THERE	TWEED	WEAVE
SHADE	SMOCK	STEER	THESE	TWINE	WEDGE
SHAKE	SNACK	STICK	THICK	TWIRL	WEIGH
SHALE	SNAIL	STILL	THING	TWIST	WHALE
SHALL	SNAKE	STING	THINK	UNCLE	WHARF
SHAME	SNEAK	STOCK	THIRD	UNDER	WHEAT
SHAPE	SNIFF	STOMP	THORN	UNFIT	WHEEL
SHARE	SNORE	STONE	THOSE	UNIFY	WHERE
SHARK	SNOWY	STORE	THREE	UNION	WHICH
SHARP	SOGGY	STORK	THROW	UNITY	WHILE
SHAVE	SOLAR	STORM	THUMB	UNTIE	WHIRL
SHAWL	SOLID	STORY	THUMP	UNTIL	WHITE
SHEEP	SOLVE	STOVE	TIDAL	UPPER	WHOLE
SHEER	SONAR	STRAP	TIGER	UPSET	WHOSE
SHEET	SONIC	STRAW	TIGHT	URBAN	WIDEN
SHELF	SORRY	STRAY	TIMID	USAGE	WIDTH
SHELL	SOUND	STRUT	TITLE	USHER	WINDY
SHIFT	SOUTH	STUCK	TOAST	USUAL	WORLD

WORRY	ALLEGE	BADGER	BREACH	CEREAL	CRAFTY
WORTH	ALLIED	BAFFLE	BREATH	CHALET	CRATER
WOVEN	ALLUDE	BAKERY	BREEZE	CHANCE	CRAVAT
WRECK	ALLURE	BALLET	BRIDGE	CHANGE	CRAYON
WRIST	ALMOND	BALLOT	BRIGHT	CHARGE	CREASE
WRITE	ALMOST	BALSAM	BROACH	CHEESE	CREATE
WRONG	ALPINE	BAMBOO	BROKEN	CHOICE	CREDIT
YACHT	AMBUSH	BANANA	BROKER	CHOOSE	CRITIC
YEARN	AMULET	BANDIT	BRONZE	CHORAL	CROCUS
YIELD	ANTHEM	BANKER	BROWSE	CHORES	CRUISE
YOUNG	ANTLER	BANTER	BRUNCH	CHORUS	CRUNCH
YOUTH	APATHY	BARBER	BUBBLE	CHROME	CURFEW
ZEBRA	APIARY	BARLEY	BUCKET	CINEMA	CUSTOM
ABACUS	APPALL	BARREL	BUCKLE	CIRCLE	DAMAGE
ABDUCT	APPEAL	BARTER	BUDGET	CIRCUS	DANCER
ABJECT	APPEAR	BASKET	BUFFET	CITRUS	DANGER
ABROAD	APPEND	BATTER	BURDEN	CLAUSE	DARING
ABRUPT	ARCADE	BATTLE	BUREAU	CLEVER	DAZZLE
ABSENT	ARCHER	BAUBLE	BURLAP	CLIENT	DEBATE
ABSORB	ARCTIC	BAZAAR	BURROW	CLINCH	DECADE
ACCENT	ARGENT	BEACON	BUSHEL	CLOSET	DECENT
ACCEPT	ARMADA	BEAGLE	BUTTER	CLOUDS	DECIDE
ACCESS	AROUND	BEAKER	BUTTON	CLOUDY	DECODE
ACCORD	ARREST	BEARER	CACTUS	CLOVER	DEDUCE
ACCRUE	ARRIVE	BEAUTY	CAMERA	COBWEB	DEFEAT
ACCUSE	ARTERY	BECAME	CAMPUS	COCOON	DEFINE
ACETIC	ARTIST	BECOME	CANADA	COFFEE	DEGREE
ACORNS	ASCEND	BEFORE	CANARY	COGNAC	DELUGE
ACROSS	ASHORE	BEHALF	CANCEL	COLLAR	DEMAND
ACTING	ASLEEP	BEHAVE	CANDID	COLONY	DENIAL
ACTION	ASPECT	BEHIND	CANDLE	COLUMN	DENTAL
ACTIVE	ASPIRE	BETTER	CANINE	COMEDY	DEPART
ACTUAL	ASSERT	BEWARE	CANOPY	COMMIT	DEPEND
ADJUST	ASSESS	BEYOND	CANVAS	COMMON	DEPICT
ADMIRE	ASSETS	BICEPS	CANYON	COMPEL	DERAIL
ADRIFT	ASSIGN	BILLOW	CARAFE	COMPLY	DERIVE
ADSORB	ASSIST	BINARY	CARBON	CONVEX	DESERT
ADVERB	ASSUME	BINDER	CAREER	CONVEY	DESIGN
ADVICE	ASSURE	BIONIC	CARPET	CONVOY	DESIRE
ADVISE	ASTUTE	BOILER	CARROT	COOKIE	DETACH
AERIAL	ATTACH	BORDER	CARTON	COPIER	DETAIL
AFFAIR	ATTAIN	BORING	CASHEW	COPPER	DETOUR
AFFECT	ATTEND	BORROW	CASTLE	CORNER	DEVICE
AFFIRM	ATTEST	BOTANY	CASUAL	CORRAL	DEVOTE
AFFORD	AUTUMN	BOTHER	CATTLE	COSMIC	DIESEL
AFLOAT	AVALON	BOTTLE	CAVERN	COTTON	DIGEST
AFRAID	AVENUE	BOTTOM	CELERY	COUGAR	DILUTE
AGENCY	AWHILE	BOUNCE	CELLAR	COUPLE	DINNER
AGENDA	AZALEA	BOVINE	CEMENT	COUPON	DIRECT
AGHAST	BABBLE	BOWLER	CENSUS	COURSE	DISHES
ALCOVE	BABOON	BRANCH	CENTER	COYOTE	DIVERT

DIVIDE	FARMER	GOSSIP	INSIDE	LEAVES	METEOR
DOCTOR	FASTEN	GOVERN	INSIST	LEDGER	METHOD
DOLLAR	FASTER	GRAPES	INTACT	LEEWAY	METRIC
DOMAIN	FATHER	GROUND	INTEND	LEGACY	METTLE
DOMINO	FAUCET	GROWTH	INTERN	LEGEND	MIDDLE
DONATE	FEEDER	GUITAR	INVEST	LENDER	MIDWAY
DONKEY	FELINE	GYPSUM	INVITE	LENGTH	MIGHTY
DOSAGE	FIDDLE	HAMLET	IODINE	LESSON	MINGLE
DRAGON	FIGURE	HAMMER	ISLAND	LETTER	MINNOW
DREAMS	FILLER	HAMPER	ITALIC	LIGHTS	MINTED
DUPLEX	FILTER	HANDLE	ITSELF	LIKELY	MINUET
DURING	FINGER	HANGAR	JACKET	LILIES	MINUTE
EASILY	FINISH	HAPPEN	JAGUAR	LINEAR	MIRAGE
EDITOR	FLAMES	HARBOR	JARGON	LINGER	MIRROR
EFFECT	FLAWED	HEALTH	JAUNTY	LIQUID	MISFIT
EFFORT	FLEECE	HEATER	JERSEY	LISTEN	MISHAP
EITHER	FLIGHT	HECKLE	JESTER	LITTLE	MISSES
EMERGE	FLORAL	HECTIC	JIGGLE	LIVING	MISTED
EMPIRE	FLOWER	HEIGHT	JIGSAW	LIZARD	MITTEN
ENAMEL	FLYING	HELIUM	JINGLE	LOCATE	MOBILE
ENCODE	FOLLOW	HELMET	JOCKEY	LOCKER	MODERN
ENCORE	FOREST	HERMIT	JOKING	LOTION	MODEST
ENDURE	FORGET	HIATUS	JOVIAL	LOUNGE	MODIFY
ENERGY	FORMAL	HIKING	JOYFUL	LOVELY	MODULE
ENGINE	FORMAT	HOBBLE	JOYOUS	LUMBER	MOMENT
ENIGMA	FORMER	HOCKEY	JUGGLE	LUXURY	MONKEY
ENOUGH	FOSSIL	HOLLOW	JUMBLE	MAGNET	MORROW
ENSIGN	FREEZE	HONEST	JUNGLE	MAMMAL	MORTAR
ENTAIL	FRIEND	HORNET	JUNIOR	MANAGE	MOTION
ENTIRE	FROLIC	HUDDLE	KARATE	MANNER	MOTIVE
ENTITY	FROZEN	HUMANE	KENNEL	MANUAL	MURMUR
EQUITY	FRUGAL	HUMBLE	KERNEL	MARBLE	MUSCLE
ERASER	FUNNEL	HUNGER	KETTLE	MARGIN	MUSEUM
ERRAND	FUSION	HUNGRY	KINDLY	MARINE	MUSKOX
ESCAPE	FUTURE	HURDLE	KITTEN	MARKER	MUSLIN
ESTATE	GADGET	HUSTLE	KNIGHT	MARKET	MUSSEL
ESTEEM	GALAXY	HYPHEN	LABELS	MARLIN	MUTINY
EXCEED	GANGES	ICICLE	LACTIC	MAROON	MUTUAL
EXCESS	GARDEN	IMMUNE	LADDER	MARVEL	MYRIAD
EXCUSE	GATHER	IMPACT	LADIES	MASCOT	MYRTLE
EXHALE	GAZEBO	IMPEDE	LAGOON	MASTER	MYSELF
EXPAND	GENIUS	IMPORT	LARGER	MATRIX	MYSTIC
EXPECT	GENTLE	IMPOSE	LARYNX	MATTER	NAPKIN
EXPERT	GLIDER	INCHES	LATELY	MATURE	NARROW
FABRIC	GLOBAL	INCOME	LATEST	MEADOW	NATION
FACADE	GLOOMY	INDEED	LAUNCH	MEDIUM	NEEDLE
FACIAL	GLOSSY	INDOOR	LAWFUL	MELLOW	NEGATE
FACTOR	GOBLET	INFANT	LAWYER	MELODY	NEPHEW
FALCON	GOGGLE	INFORM	LAYOUT	MEMBER	NETTLE
FAMILY	GOLDEN	INNING	LEADER	MEMORY	NEURAL
FAMOUS	GOLFER	INSECT	LEAGUE	MERLIN	NEURON

NEWTON	PARADE	POROUS	RECORD	ROBUST	SENSOR
NIBBLE	PARCEL	PORTER	REDEEM	ROCKET	SEQUEL
NICELY	PARDON	POSSUM	REDUCE	RODENT	SERENE
NICKEL	PARENT	POTATO	REFILL	ROSTER	SERIES
NIMBLE	PARLOR	POWDER	REFINE	ROTATE	SESAME
NIMBLY	PARROT	PREFER	REFLEX	RUDDER	SETTLE
NIMBUS	PASTEL	PREFIX	REFORM	RUFFLE	SHADOW
NOBODY	PASTRY	PRETTY	REFUEL	RUMPUS	SHAGGY
NORMAL	PATENT	PROFIT	REFUGE	RUNNER	SHELVE
NOTARY	PATROL	PROMPT	REFUND	RUNOFF	SHIELD
NOTICE	PAUPER	PROPER	REFUSE	RUNWAY	SHIVER
NOTIFY	PAYOUT	PUBLIC	REGAIN	RUSSET	SHOULD
NOTING	PEAKED	PUDDLE	REGARD	RUSTLE	SHOVEL
NOTION	PEANUT	PULLEY	REGION	SACHET	SHOWER
NOVICE	PEBBLE	PUPPET	REGRET	SADDLE	SHRIMP
NOZZLE	PEDDLE	PURELY	REJECT	SAFARI	SHRINK
NUANCE	PENCIL	PURIFY	RELATE	SAFELY	SIERRA
NUGGET	PEOPLE	PURPLE	RELIEF	SAILOR	SIGNAL
NUMBER	PEPPER	PURSUE	RELISH	SALAMI	SILICA
NUZZLE	PERMIT	PUZZLE	REMAIN	SALARY	SILVER
OBJECT	PERSON	PYTHON	REMARK	SALINA	SIMPLE
OBTAIN	PERUSE	QUAINT	REMEDY	SALINE	SINGLE
OCTAVE	PHRASE	QUARRY	REMIND	SALTED	SISTER
OFFICE	PHYSIC	QUARTZ	REMOTE	SALUTE	SIZZLE
OFFSET	PICKED	QUENCH	REMOVE	SAMPLE	SKETCH
OLIVER	PICKLE	QUICHE	RENOWN	SANDAL	SKIING
OMELET	PICNIC	QUIVER	RENTAL	SATIRE	SLALOM
ONWARD	PIECED	RABBIT	REPAIR	SATURN	SLEEVE
OPAQUE	PIGEON	RACKET	REPEAT	SAVORY	SLEIGH
OPTION	PILLAR	RADISH	REPLAY	SCARCE	SLEUTH
ORANGE	PILLOW	RADIUM	REPORT	SCHEME	SLIGHT
ORCHID	PILOTS	RADIUS	RERUNS	SCHOOL	SLOGAN
ORIGIN	PIRATE	RAFFLE	RESCUE	SCORCH	SLOWLY
ORIOLE	PISTON	RAISIN	RESIDE	SCRAPE	SNAZZY
OTTAWA	PLANET	RAMBLE	RESIST	SCREAM	SNEEZE
OUTFIT	PLAQUE	RANDOM	RESORT	SCREEN	SOCCER
OUTING	PLASMA	RANGER	RESTED	SCRIBE	SOCIAL
OUTLAW	PLEASE	RAPIDS	RESULT	SCRIPT	SODIUM
OUTPUT	PLEDGE	RAPPEL	RESUME	SCROLL	SOFTEN
OUTRUN	PLURAL	RASCAL	RETAIL	SCYTHE	SOFTER
OUTSET	POCKET	RATHER	RETIRE	SEARCH	SOFTLY
OXYGEN	PODIUM	RATING	RETURN	SEASON	SOLEMN
OYSTER	POETRY	RATTLE	REVEAL	SEATED	SOMBER
PACIFY	POLICE	RAVINE	REVIEW	SECOND	SONNET
PACKED	POLICY	REALLY	REWARD	SECRET	SOOTHE
PADDLE	POLISH	REASON	REWIND	SECURE	SORROW
PAJAMA	POLITE	REBATE	RHYTHM	SEESAW	SOURCE
PALACE	POLLEN	RECALL	RIBBON	SELDOM	SPARSE
PALLET	PONIES	RECENT	RIDDLE	SELECT	SPEECH
PAMPER	POODLE	RECESS	RIPPLE	SENATE	SPIDER
PANTRY	POPLAR	RECIPE	RITUAL	SENIOR	SPIRAL

SPIRIT	SUMMER	TRIVIA	VIABLE	ADDRESS	APOLOGY
SPLASH	SUMMIT	TROPHY	VICTOR	ADJOURN	APPAREL
SPLINT	SUNDAE	TUMBLE	VIOLET	ADMIRAL	APPEASE
SPOKEN	SUNSET	TUNNEL	VIOLIN	ADVANCE	APPLAUD
SPONGE	SUPERB	TURKEY	VIRTUE	ADVERSE	APPLIES
SPORTS	SUPPER	TURNIP	VISION	AEROBIC	APPOINT
SPRAIN	SUPPLY	TURTLE	VISUAL	AEROSOL	APRICOT
SPREAD	SURREY	TUXEDO	VOLLEY	AFFLICT	AQUATIC
SPRING	SURVEY	TWELVE	VOLUME	AGAINST	ARCHAIC
SPRINT	SWITCH	TWENTY	VOYAGE	AGELESS	ARKCITY
SPROUT	SYMBOL	TYCOON	WAFFLE	AGILITY	ARRANGE
SPRUCE	SYSTEM	TYPIST	WAITER	AGITATE	ARRIVAL
SQUALL	TACKLE	UMPIRE	WALLET	AILMENT	ARTICLE
SQUARE	TACTIC	UNABLE	WALNUT	AIMLESS	ARTISAN
SQUASH	TAILOR	UNEASY	WALRUS	AIRFARE	ASHAMED
SQUEAK	TALENT	UNFAIR	WANDER	AIRLINE	ASPHALT
SQUEAL	TAMPER	UNFOLD	WARDEN	AIRPORT	ASSURED
SQUINT	TARGET	UNGLUE	WARMTH	ALCHEMY	ASTOUND
SQUIRE	TARTAN	UNIQUE	WASHER	ALFALFA	ATHLETE
STABLE	TATTOO	UNLESS	WEALTH	ALGEBRA	ATTEMPT
STAPLE	TENANT	UNLIKE	WEASEL	ALLERGY	ATTRACT
STATIC	TENDER	UNLOAD	WICKER	ALMANAC	AUCTION
STATUE	TENDON	UNLOCK	WILLOW	ALMONDS	AUDIBLE
STATUS	TENNIS	UNPACK	WINDOW	ALREADY	AUDITOR
STEADY	TENURE	UNPLUG	WINTER	ALUMNUS	AVERAGE
STEREO	THANKS	UNTIDY	WISDOM	AMAZING	AVIATOR
STITCH	THEORY	UNWIND	WITHIN	AMIABLE	AVOCADO
STORMY	THESIS	UNWRAP	WOBBLE	AMMONIA	AWESOME
STRAIN	THIRST	UPDATE	WONDER	AMNESIA	AWKWARD
STRAIT	THREAD	UPHILL	WORTHY	AMPLIFY	AWNINGS
STREAK	THRIFT	UPLIFT	WRENCH	AMUSING	BACKLOG
STREAM	THRILL	UPRISE	WRITER	ANAGRAM	BAGGAGE
STREET	THROAT	UPROAR	YELLOW	ANALOGY	BALANCE
STRIDE	THRONE	UPSIDE	YONDER	ANALYST	BALCONY
STRIKE	TICKET	UPWARD	ZENITH	ANALYZE	BALLOON
STRING	TICKLE	URGENT	ZIGZAG	ANARCHY	BANDAGE
STRIVE	TIMBER	USEFUL	ZIPPER	ANATOMY	BANQUET
STROBE	TISSUE	UTMOST	ZODIAC	ANCIENT	BARBELL
STROLL	TOFFEE	UTOPIA	ABANDON	ANDROID	BARGAIN
STRONG	TOMATO	VACANT	ABDOMEN	ANGUISH	BAROQUE
STRUCK	TONGUE	VACATE	ABILITY	ANIMATE	BARRIER
STUCCO	TONSIL	VACUUM	ABOLISH	ANNUITY	BATTERY
STUDIO	TOPEKA	VALLEY	ABSENCE	ANOMALY	BEANBAG
STURDY	TOPPLE	VANISH	ACADEMY	ANOTHER	BEARING
SUBDUE	TOUCAN	VANITY	ACCLAIM	ANSWERS	BECAUSE
SUBLET	TOWARD	VELVET	ACCOUNT	ANTENNA	BEDPOST
SUBMIT	TRANCE	VENDOR	ACHIEVE	ANTIQUE	BEDROCK
SUBTLE	TRAVEL	VERIFY	ACQUIRE	ANTONYM	BEEHIVE
SUBURB	TREATY	VERNON	ACREAGE	ANXIETY	BELATED
SUBWAY	TREMOR	VERTEX	ACROBAT	ANXIOUS	BELLBOY
SUDDEN	TRENCH	VESSEL	ACTRESS	ANYBODY	BENEATH

BENEFIT	CASCADE	CONCISE	DESERVE	ENQUIRY	GENERAL
BEQUEST	CATALOG	CONDUCT	DESKTOP	ENTROPY	GENERIC
BESIDES	CAUTION	CONDUIT	DESPITE	EQUINOX	GENUINE
BESIEGE	CEILING	CONFIRM	DESSERT	ERRATIC	GEOLOGY
BETWEEN	CENTRAL	CONFORM	DESTINY	ESSENCE	GESTURE
BICYCLE	CENTURY	CONFUSE	DEVELOP	EVENING	GIRAFFE
BILLION	CERTAIN	CONNECT	DEWDROP	EXAMINE	GLACIAL
BIOLOGY	CERTIFY	CONSENT	DIAGRAM	EXAMPLE	GLACIER
BISCUIT	CHAMBER	CONSIST	DIALECT	EXHAUST	GLASSES
BLANKET	CHANNEL	CONSOLE	DIAMOND	EXPENSE	GLIMMER
BLATANT	CHAPTER	CONSULT	DICTATE	EXPLAIN	GLIMPSE
BLOSSOM	CHARADE	CONSUME	DIFFUSE	EXPRESS	GOLFING
BLUNDER	CHARIOT	CONTACT	DIGITAL	EXTREME	GONDOLA
BOBSLED	CHARTER	CONTAIN	DIGNIFY	FACTORS	GOODBYE
BOLSTER	CHASSIS	CONTENT	DIGNITY	FACTORY	GORILLA
BONANZA	CHATTER	CONTEST	DILEMMA	FACULTY	GRADUAL
BONFIRE	CHEETAH	CONTEXT	DIPLOMA	FANFARE	GRAMMAR
BOOSTER	CHICKEN	CONTOUR	DISCARD	FARTHER	GRANOLA
BOREDOM	CHIMNEY	CONVENE	DISCERN	FASHION	GRAPHIC
BOULDER	CHRONIC	COOKIES	DISCORD	FATIGUE	GRAVITY
BOUQUET	CIRCUIT	COPIOUS	DISCUSS	FEATHER	GRIDDLE
BOWLING	CITIZEN	CORDIAL	DISMISS	FEATURE	GRIZZLY
BRACKET	CLASSIC	CORONET	DISPLAY	FEDERAL	GROCERY
BREATHE	CLEANER	COUNTER	DISPUTE	FEELING	GUITARS
BREVITY	CLEANSE	CURIOUS	DISTANT	FERTILE	GYMNAST
BRISTLE	CLIMATE	CURTAIN	DISTILL	FICTION	HABITAT
BROTHER	CLUSTER	CUSHION	DISTORT	FINANCE	HAIRCUT
BUFFALO	CLUTTER	CYCLIST	DISTURB	FINESSE	HAIRPIN
BUILDER	COASTAL	CYCLONE	DIVERGE	FISSION	HALOGEN
BULLPEN	COCONUT	DAMSELS	DIVERSE	FIXTURE	HAMMOCK
CABARET	COLLECT	DANCING	DIVIDED	FLANNEL	HAMSTER
CABBAGE	COLLEGE	DECEIVE	DOLPHIN	FLATTEN	HARMONY
CABINET	COLLIDE	DECIBEL	DOORWAY	FLORIST	HARNESS
CABOOSE	COMBINE	DECIMAL	DORMANT	FOOLISH	HARVEST
CADENCE	COMFORT	DECLARE	DRESSER	FOREIGN	HEALTHY
CALCIUM	COMMAND	DECLINE	DRIZZLE	FOREVER	HEATHER
CALORIE	COMMEND	DEFAULT	DYNAMIC	FORGIVE	HEIRESS
CALVARY	COMMENT	DEFENSE	DYNASTY	FORMULA	HELPFUL
CALYPSO	COMMUNE	DEFLECT	EARDRUM	FORTUNE	HELPING
CANTEEN	COMPACT	DEFROST	ECLIPSE	FORWARD	HERRING
CANYONS	COMPANY	DEGREES	ECONOMY	FOUNDER	HERSELF
CAPITAL	COMPARE	DELIGHT	EDITION	FRAGILE	HEXAGON
CAPSULE	COMPASS	DELIVER	EDUCATE	FRANTIC	HICKORY
CAPTAIN	COMPETE	DENSITY	ELEGANT	FREEDOM	HISTORY
CAPTION	COMPLEX	DENTIST	ELEMENT	FREEWAY	HOBBIES
CAPTIVE	COMPUTE	DEPLETE	ELEVATE	FREIGHT	HOLIDAY
CARAMEL	CONCEAL	DEPOSIT	ELLIPSE	FRIGATE	HONESTY
CAREFUL	CONCEDE	DEPRIVE	ELUSIVE	FUNERAL	HOPEFUL
CARIBOU	CONCEPT	DERRICK	EMERALD	FURIOUS	HORIZON
CARRIER	CONCERN	DESCEND	EMOTION	GALLERY	HOSTESS
CARTOON	CONCERT	DESCENT	ENCLOSE	GARNISH	HOUSTON

HOWEVER	LEXICON	MISSION	ORGANIC	PIONEER	PUMPKIN
HUSBAND	LIBERTY	MISTAKE	OSTRICH	PIRATES	PUPPIES
HYDRANT	LIBRARY	MITTENS	OUTDOOR	PITCHER	PURPOSE
HYGIENE	LICENSE	MIXTURE	OUTLOOK	PLANNED	PURRING
ICEBERG	LIONESS	MOISTEN	OUTPOST	PLASTER	PURSUIT
IMAGINE	LIQUIDS	MOLLUSK	OUTRAGE	PLASTIC	PUZZLED
IMITATE	LITERAL	MONITOR	OUTSIDE	PLATEAU	PYRAMID
IMMENSE	LOBSTER	MONSOON	OVERALL	PLATOON	QUALIFY
IMPRESS	LOGGING	MOORING	OVERJOY	PLIABLE	QUALITY
IMPRINT	LOOMING	MORAINE	OXIDIZE	PLUMAGE	QUARTER
IMPROVE	LOTTERY	MORNING	PACIFIC	POLYGON	QUARTET
IMPULSE	LOVABLE	MUFFLER	PACKAGE	POMPOUS	QUICKLY
INCLUDE	LOYALTY	MUNDANE	PADDOCK	POPCORN	QUIETLY
INDOORS	LOZENGE	MUSICAL	PADLOCK	POPULAR	RACCOON
INERTIA	LUGGAGE	MUSKRAT	PAGEANT	PORTAGE	RADIATE
INFLATE	LULLABY	MUSTANG	PAJAMAS	PORTRAY	RADICAL
INHABIT	MACHINE	MUSTARD	PANCAKE	POSTAGE	RAILWAY
INHERIT	MAGENTA	MYSTERY	PANTHER	POSTURE	RAINBOW
INQUIRE	MAGICAL	NARRATE	PARADED	POWERED	RAMBLER
INSPECT	MAGNIFY	NATURAL	PARADOX	PRAIRIE	RANCHER
INSPIRE	MAILBOX	NECKTIE	PARASOL	PRECEDE	RANKING
INSTALL	MAJESTY	NEITHER	PARKING	PREDICT	RAPPORT
INSTANT	MANAGER	NEMESIS	PARSLEY	PREFACE	RAVIOLI
INSTEAD	MANDATE	NEPTUNE	PARSONS	PRELUDE	READOUT
INSTILL	MANNERS	NERVOUS	PARTIAL	PREMIUM	REALIGN
IRONING	MANSION	NETWORK	PARTNER	PRETEND	REALISM
ISOLATE	MARBLES	NEUTRAL	PASSAGE	PRETZEL	REALITY
ITALICS	MARQUEE	NOMINAL	PASSIVE	PREVAIL	REALIZE
ITEMIZE	MASONRY	NOMINEE	PASTURE	PREVENT	REALTOR
JEWELER	MASSIVE	NONSTOP	PATIENT	PREVIEW	REASONS
JEWELRY	MAXIMUM	NOSTRIL	PATRIOT	PRIMARY	REBOUND
JOGGING	MEANING	NOTABLE	PATTERN	PRINTER	REBUILD
JUGGLER	MEASURE	NOTHING	PAUSING	PRIVATE	RECEIPT
JUNIPER	MEDIATE	NOURISH	PAYLOAD	PROBLEM	RECEIVE
JUSTIFY	MEDICAL	NOVELTY	PEACOCK	PROCEED	RECITAL
KETTLES	MEETING	NUMERAL	PELICAN	PROCESS	RECLAIM
KEYHOLE	MENTION	NURSERY	PENALTY	PROCURE	RECLINE
KINGDOM	MERCURY	OATMEAL	PERCENT	PRODUCE	RECOVER
KNEECAP	MERMAID	OBSCURE	PERFECT	PRODUCT	RECRUIT
LACKING	MERRIAM	OBSERVE	PERFORM	PROFILE	RECTIFY
LANDING	MESSAGE	OBVIOUS	PERFUME	PROGRAM	RECYCLE
LANTERN	METEORS	OCTAGON	PERHAPS	PROJECT	REFEREE
LASTING	MIGRATE	OCTOBER	PERPLEX	PROMISE	REFINED
LAUNDRY	MILEAGE	OCTOPUS	PERSIST	PRONOUN	REFLECT
LEAWOOD	MINERAL	ODYSSEY	PHANTOM	PROTECT	REFRAIN
LECTURE	MINIMAL	OFFENSE	PIANIST	PROTEIN	REFRESH
LEISURE	MINIMUM	OPERATE	PICCOLO	PROVERB	REFUSAL
LENGTHY	MINUTES	OPINION	PICTURE	PROVIDE	REGIMEN
LENIENT	MIRACLE	OPTICAL	PIGMENT	PROWESS	REGULAR
LEOPARD	MISSILE	ORCHARD	PILLOWS	PRUDENT	REJOICE
LETTUCE	MISSING	OREGANO	PINBALL	PUDDING	RELAPSE

RELEASE	SCRATCH	SOLDIER	TERRIER	VARIETY	ABRASION
RELIEVE	SCREECH	SOMEDAY	TEXTILE	VARIOUS	ABSOLUTE
REMARKS	SCRUPLE	SOPRANO	THEATER	VARNISH	ABUNDANT
REMNANT	SCUTTLE	SPANIEL	THERMAL	VEHICLE	ACADEMIC
REMODEL	SEAFOOD	SPARKLE	THIRSTY	VENTURE	ACCIDENT
RENEWAL	SEAGULL	SPARROW	THOUGHT	VERANDA	ACCOLADE
REPLACE	SEAPORT	SPECIAL	THROUGH	VERBOSE	ACCOUNTS
REPLICA	SEASIDE	SPINACH	THUNDER	VERDICT	ACCURACY
REPTILE	SEAWEED	SPINDLE	TOASTER	VERSION	ACCURATE
REQUEST	SECTION	SPONSOR	TONIGHT	VERTIGO	ACOUSTIC
REQUIRE	SEGMENT	SQUEEZE	TOOLBOX	VIBRANT	ACQUAINT
RESERVE	SEISMIC	STADIUM	TORNADO	VICTORY	ADDENDUM
RESIDUE	SELFISH	STAMINA	TOURISM	VILLAGE	ADDITION
RESOLVE	SELLOUT	STANDBY	TOURIST	VINEGAR	ADEQUATE
RESPECT	SELTZER	STAPLER	TRACTOR	VINTAGE	ADHESIVE
RESPOND	SERIOUS	STARTLE	TRAFFIC	VIRTUAL	ADJACENT
RESTFUL	SERVANT	STATION	TRAGEDY	VISIBLE	ADMONISH
RESTORE	SERVICE	STELLAR	TRAILER	VISITOR	ADVOCATE
RETREAT	SESSION	STOMACH	TRANSIT	VITAMIN	AEROBICS
REUNION	SETBACK	STORAGE	TRAPEZE	VOLCANO	AFFINITY
REVENUE	SETTING	STRANGE	TREETOP	VOLTAGE	AFFLUENT
REVERSE	SETTLER	STRETCH	TREMBLE	VOUCHER	AIRBORNE
REVOLVE	SEVENTY	STUDENT	TRIBUTE	VOYAGER	AIRCRAFT
REWRITE	SEVERAL	STYLISH	TRICEPS	VULTURE	AIRPLANE
RHUBARB	SHAMPOO	SUBSIDE	TRILOGY	WALLABY	AIRSPEED
ROASTED	SHATTER	SUCCEED	TRIUMPH	WARNING	AIRTIGHT
ROMANCE	SHAWNEE	SUCCESS	TRIVIAL	WASHING	ALLOCATE
ROOFTOP	SHELTER	SUGGEST	TROLLEY	WAYBILL	ALPHABET
ROOSTER	SHERIFF	SUMMARY	TROUBLE	WAYWARD	ALTITUDE
ROSEBUD	SHIMMER	SUNBURN	TRUMPET	WEALTHY	ALUMINUM
ROUTINE	SHUDDER	SUNDIAL	TUESDAY	WEATHER	AMBITION
ROWBOAT	SHUFFLE	SUNDOWN	TUITION	WEDDING	AMORTIZE
ROYALTY	SHUTTER	SUNRISE	TYPHOON	WEEKEND	ANACONDA
RUNNING	SIBLING	SUPPORT	TYPICAL	WELCOME	ANALYSIS
SALVAGE	SIGNIFY	SUPPOSE	UNAWARE	WESTERN	ANCESTOR
SANDALS	SILENCE	SUPREME	UNCOVER	WHETHER	ANECDOTE
SANDBAG	SILICON	SURFACE	UNDERGO	WHISKER	ANNOUNCE
SAPLING	SINCERE	SURPLUS	UNICORN	WHISPER	ANTELOPE
SARCASM	SITTING	SUSPEND	UNIFORM	WHISTLE	ANYTHING
SARDINE	SIXTEEN	SUSTAIN	UNKNOWN	WICHITA	APPENDIX
SAUSAGE	SKIRTED	SWALLOW	UNUSUAL	WILDCAT	APPETITE
SAWDUST	SKYDIVE	SWEATER	UPFRONT	WINNING	APPRAISE
SAWFISH	SKYLARK	SWIFTLY	UPGRADE	WISHFUL	APPROACH
SAWMILL	SLEIGHT	SYMPTOM	UPSTAGE	WITHOUT	APPROVAL
SCALLOP	SLUMBER	SYNONYM	UTENSIL	WITNESS	APTITUDE
SCAMPER	SMARTLY	TARNISH	UTILITY	WORKDAY	AQUARIUM
SCANNER	SNIPPET	TEACHER	VACANCY	WRANGLE	ARACHNID
SCARLET	SNORKEL	TEDIOUS	VACCINE	WRAPPER	ARGUMENT
SCENTED	SNUGGLE	TENSION	VALIANT	ZILLION	ARMCHAIR
SCIENCE	SOARING	TERRACE	VAMPIRE	ZOOLOGY	AROMATIC
SCOOTER	SOCIETY	TERRAIN	VANILLA	ABDICATE	ARPEGGIO

ARRANGED	BRACELET	CONCRETE	DISCOUNT	EYEGLASS	HOMEWORK
ARROGANT	BROCHURE	CONFETTI	DISCOVER	FABULOUS	HONEYBEE
ARTIFACT	BUILDING	CONFLICT	DISGUISE	FAMILIAR	HOSPITAL
ARTISTIC	BULLETIN	CONFOUND	DISKETTE	FAREWELL	HUMIDITY
ASBESTOS	BULLSEYE	CONQUEST	DISPATCH	FEEDBACK	HUMILITY
ASHCROFT	BUNGALOW	CONSERVE	DISPENSE	FESTIVAL	HYACINTH
ASSEMBLE	CALCULUS	CONSIDER	DISSOLVE	FILAMENT	HYDROGEN
ASSEMBLY	CALENDAR	CONSTANT	DISTANCE	FIREWOOD	HYSTERIA
ASTERISK	CALLIOPE	CONSUMER	DISTINCT	FLAGPOLE	ILLUSION
ASTEROID	CALORIES	CONTINUE	DISTRACT	FLAMINGO	IMPOSING
ASTONISH	CAMPAIGN	CONTRACT	DISTRICT	FLOTILLA	INCIDENT
ATHLETIC	CAMPFIRE	CONTRAST	DIVIDEND	FLOURISH	INCREASE
ATLANTIC	CANISTER	CONVERGE	DIVISION	FOOTBALL	INDIRECT
ATTITUDE	CAPACITY	CONVERSE	DOCUMENT	FORCEFUL	INDUSTRY
ATTORNEY	CARDINAL	CONVINCE	DOMESTIC	FORECAST	INFINITE
AUDIENCE	CAREFREE	COOKBOOK	DOMINANT	FOUNTAIN	INFINITY
AUTOMATE	CARELESS	CORRIDOR	DOMINION	FRACTION	INFORMAL
AVIATION	CARNIVAL	CRITICAL	DOUBTFUL	FRAGMENT	INFUSION
BACHELOR	CARRIAGE	CROSSBAR	DOUGHNUT	FRECKLES	INNOCENT
BACKDROP	CASSETTE	CUCUMBER	DOWNHILL	FREQUENT	INNOVATE
BACKFIRE	CATAPULT	CUFFLINK	DOWNTOWN	FRESHMAN	INSECURE
BACKPACK	CATEGORY	CUPBOARD	DRAWBACK	FRICTION	INSIGNIA
BACKSPIN	CAUSEWAY	CUSTOMER	DRESSING	FRIENDLY	INSTANCE
BACKWARD	CAUTIOUS	CYLINDER	DRIVEWAY	FRONTIER	INSTINCT
BACKYARD	CEREMONY	DAFFODIL	DWELLING	FUNCTION	INSTRUCT
BACTERIA	CHAMPION	DARKROOM	ECONOMIC	GALACTIC	INSULATE
BAGPIPES	CHARCOAL	DAUGHTER	EGGPLANT	GENEROUS	INTENDED
BALLPARK	CHARISMA	DAYDREAM	ELDORADO	GEODESIC	INTERCOM
BALLROOM	CHECKERS	DAYLIGHT	ELECTION	GERANIUM	INTEREST
BANISTER	CHEERFUL	DECEMBER	ELECTRIC	GLORIOUS	INTERIOR
BARBECUE	CHESTNUT	DECIPHER	ELEPHANT	GLOSSARY	INTERNAL
BARRACKS	CHIPMUNK	DECISION	ELEVATOR	GOLDFISH	INTERVAL
BASEBALL	CINNAMON	DEDICATE	EMPHASIS	GRACEFUL	INTREPID
BASEMENT	CITATION	DEFIANCE	EMPLOYEE	GRADUATE	INTRIGUE
BATHROOM	CLARINET	DEFINITE	EMPLOYER	GRAPHICS	INVESTOR
BEGINNER	CLEARING	DELEGATE	ENGINEER	GRATUITY	IRRIGATE
BEHAVIOR	CODEWORD	DELICATE	ENQUIRER	GREENERY	IRRITATE
BEVERAGE	COHERENT	DELIVERY	ENTIRETY	GUARDIAN	JEALOUSY
BIRTHDAY	COINCIDE	DESCRIBE	ENTRANCE	GUIDANCE	JETLINER
BLACKOUT	COLESLAW	DESERVED	ENVELOPE	HANDBAGS	JUDGMENT
BLIZZARD	COLLAPSE	DESIGNER	EPILOGUE	HANDSOME	JUVENILE
BLUEBIRD	COLONIAL	DIAGNOSE	EQUALITY	HARDWARE	KANGAROO
BOATYARD	COLOSSAL	DIAGONAL	EQUATION	HARDWOOD	KEROSENE
BONAFIDE	COMMERCE	DIALOGUE	ESTIMATE	HAYSTACK	KINDNESS
BOOKCASE	COMPLAIN	DIAMETER	EVALUATE	HEADACHE	KNAPSACK
BOOKMARK	COMPLETE	DILIGENT	EVENTFUL	HEREDITY	LACROSSE
BOOKSHOP	COMPOUND	DIMINISH	EVERYDAY	HERITAGE	LAMINATE
BOOKWORM	COMPRESS	DIPLOMAT	EXERCISE	HILLSIDE	LANDLORD
BOULDERS	COMPUTER	DIRECTOR	EXPEDITE	HISTORIC	LANDMARK
BOUNDARY	CONCERTO	DISAGREE	EXTERIOR	HOLIDAYS	LANGUAGE
BOUTIQUE	CONCLUDE	DISASTER	EXTERNAL	HOLOGRAM	LANTERNS

LATITUDE	MERCIFUL	NORMALLY	PERCEIVE	QUESTION	SAILBOAT
LAUGHTER	MERIDIAN	NORTHERN	PERIODIC	QUICKEST	SAILFISH
LAWRENCE	MERINGUE	NOTARIZE	PERMEATE	QUOTIENT	SANCTITY
LEAPFROG	METALLIC	NOVEMBER	PEROXIDE	RADIATOR	SANDWICH
LEFTOVER	METAPHOR	NUISANCE	PERSONAL	RAILROAD	SANITARY
LEMONADE	MIDNIGHT	OBEDIENT	PERSUADE	RAINCOAT	SAPPHIRE
LENGTHEN	MIDPOINT	OBLIVION	PETULANT	RAINDROP	SATURATE
LEVERAGE	MINIMIZE	OBSOLETE	PHARMACY	RAINFALL	SAWTOOTH
LICORICE	MINSTREL	OBSTACLE	PHEASANT	RATIONAL	SCABBARD
LIFEBOAT	MISCHIEF	OCCASION	PHONETIC	RAVENOUS	SCAFFOLD
LIFETIME	MISPLACE	ODOMETER	PHYSICAL	REACTION	SCENARIO
LIGAMENT	MISSPELL	OFFICIAL	PINAFORE	REAPPEAR	SCHEDULE
LIKEWISE	MOCCASIN	OFFSHORE	PINNACLE	REASSIGN	SCHOONER
LINOLEUM	MODERATE	OMISSION	PINPOINT	REASSURE	SCISSORS
LIPSTICK	MODESTLY	OPERATOR	PIONEERS	RECENTLY	SCORPION
LITERACY	MOISTURE	OPPONENT	PIPELINE	RECKLESS	SCRABBLE
LITERARY	MOLASSES	OPTIMISM	PLATFORM	RECREATE	SCRAMBLE
LOCATION	MOLECULE	ORDINARY	PLATINUM	REDEFINE	SCRIBBLE
LOGISTIC	MOLEHILL	ORNAMENT	PLEASANT	REFERRAL	SCRUTINY
LOOPHOLE	MONARCHY	OUTBOUND	POPULACE	REGAINED	SCULPTOR
LOWLANDS	MONOPOLY	OUTBREAK	PORPOISE	REGARDED	SEABOARD
LUMINOUS	MONOTONE	OUTDOORS	PORRIDGE	REGIONAL	SEACOAST
LUNCHEON	MONUMENT	OUTFIELD	PORTABLE	REGISTER	SEAHORSE
MACARONI	MORTGAGE	OVERCAST	PORTRAIT	REINDEER	SEASHORE
MACKEREL	MOSQUITO	OVERCOAT	POSITION	RELATION	SEASONAL
MAGAZINE	MOTHBALL	OVERHAUL	POSSIBLE	RELATIVE	SECRETLY
MAGICIAN	MOTORCAR	OVERTIME	POSTCARD	RELAXING	SECURITY
MAINLAND	MOTORIZE	OVERTURE	POSTPONE	RELEVANT	SEDATION
MAINTAIN	MOUNTAIN	OVERVIEW	PRACTICE	RELOCATE	SEDIMENT
MAJESTIC	MOVEMENT	PAMPHLET	PRECINCT	REMEMBER	SEMESTER
MAJORITY	MULBERRY	PANORAMA	PRECIOUS	REMINDER	SENSIBLE
MANDOLIN	MULTIPLE	PARABOLA	PRESENCE	REPHRASE	SENTENCE
MANEUVER	MULTIPLY	PARADIGM	PRESSURE	REPLACED	SEPARATE
MANICURE	MUSHROOM	PARADISE	PRESTIGE	REPORTER	SEQUENCE
MANIFEST	MUSTACHE	PARAFFIN	PREVIOUS	REPUBLIC	SERENADE
MANIFOLD	NAMESAKE	PARAKEET	PRIMROSE	RESEARCH	SHAMROCK
MARATHON	NAUTILUS	PARALLAX	PRIORITY	RESIDENT	SHEPHERD
MARGINAL	NAVIGATE	PARALLEL	PRISTINE	RESOLVED	SHERBERT
MARIGOLD	NECKLACE	PARKLAND	PRODUCER	RESONANT	SHILLING
MARINADE	NEEDLESS	PARTICLE	PROGRESS	RESOURCE	SHIPMATE
MARINATE	NEIGHBOR	PASSPORT	PROPERLY	RESPONSE	SHIPMENT
MARITIME	NEWCOMER	PASSWORD	PROPERTY	RESTLESS	SHIPYARD
MARRIAGE	NEWSCAST	PATIENCE	PROSPECT	RESTRAIN	SHOELACE
MATERIAL	NICKNAME	PAVEMENT	PROTOCOL	RESTRICT	SHOPPING
MATTRESS	NINETEEN	PAVILION	PROVINCE	RESTROOM	SHOULDER
MAVERICK	NINETIES	PEACOCKS	PULLOVER	REVIEWER	SHOWBOAT
MEANTIME	NITROGEN	PEDESTAL	PUNCTUAL	REVISION	SHOWERED
MECHANIC	NOBILITY	PEDICURE	PURCHASE	RHAPSODY	SHOWROOM
MEDICINE	NOBLEMAN	PEGBOARD	QUADRANT	RHETORIC	SHUTDOWN
MEDIOCRE	NOMINATE	PENDULUM	QUANTIFY	ROMANTIC	SIDELINE
MERCHANT	NONSENSE	PENGUINS	QUANTITY	ROTATION	SIDESTEP

SIDEWALK	SUCCINCT	UNCOMMON	AESTHETIC	BLUEBERRY	CROCODILE
SIDEWAYS	SUITABLE	UNDERCUT	AFFIDAVIT	BLUEGRASS	DANDELION
SIMPLIFY	SUITCASE	UNDERDOG	AFFILIATE	BLUEPRINT	DANGEROUS
SIMULATE	SUNLIGHT	UNDERSEA	AFTERMATH	BOOKSTORE	DEDICATED
SINGULAR	SUNSHINE	UNDERWAY	AFTERNOON	BOOMERANG	DEFICIENT
SLIGHTLY	SUPERIOR	UNICYCLE	ALABASTER	BOULEVARD	DELICIOUS
SLIPPERY	SURPRISE	UNIVERSE	ALBATROSS	BREAKFAST	DEMOCRACY
SMITHERS	SURROUND	UNLIKELY	ALGORITHM	BRIEFCASE	DEPARTURE
SNOWBALL	SUSPENSE	UNSETTLE	ALLIGATOR	BRILLIANT	DESPERATE
SNOWSHOE	SWIMSUIT	UNSTABLE	AMBIGUOUS	BROADCAST	DETECTIVE
SOCIABLE	SYMMETRY	UPCOMING	AMBITIOUS	BULLDOZER	DETERGENT
SOFTBALL	SYMPATHY	VACATION	AMPERSAND	CAFETERIA	DETERMINE
SOFTWARE	SYMPHONY	VAGABOND	AMPHIBIAN	CALCULATE	DIAGNOSIS
SOLIDIFY	SYNDROME	VALIDATE	AMPLIFIER	CALIBRATE	DIFFERENT
SOLITARY	TACTICAL	VALUABLE	AMPLITUDE	CAPACITOR	DIFFICULT
SOLITUDE	TANGIBLE	VANGUARD	ANCESTRAL	CAPTIVATE	DIGNIFIED
SOLSTICE	TAPESTRY	VARIABLE	ANCHOVIES	CARDBOARD	DIMENSION
SOLUTION	TEASPOON	VARIANCE	ANONYMOUS	CARPENTER	DIRECTION
SOMBRERO	TEENAGER	VELOCITY	ANTHOLOGY	CARTWHEEL	DISAPPEAR
SOMEBODY	TELECAST	VERTEBRA	ANTIQUITY	CASSEROLE	DISCOVERY
SOMETIME	TELEGRAM	VERTICAL	APARTMENT	CENTIPEDE	DISPENSER
SONGBOOK	TENDENCY	VICINITY	APOLOGIZE	CERTITUDE	DOCTORATE
SORCERER	TERMINAL	VIGNETTE	APPETIZER	CHALLENGE	DORMITORY
SOUTHERN	TERRIBLE	VINEYARD	APPLIANCE	CHAMPAGNE	DUPLICATE
SOUVENIR	TERRIFIC	VIRTUOSO	AQUEDUCTS	CHARACTER	EARTHWORM
SPACIOUS	TEXTBOOK	VITALITY	ARBITRARY	CHECKLIST	ECCENTRIC
SPARWOOD	THEMATIC	WAITRESS	ARGONAUTS	CHEMISTRY	EDITORIAL
SPECIFIC	THIRTEEN	WARDROBE	ARMSTRONG	CHILDHOOD	EDUCATION
SPECTRUM	THURSDAY	WARRANTY	ARROGANCE	CHOCOLATE	EMERGENCY
SPLENDID	TOBOGGAN	WHATEVER	ARROWHEAD	CLASSROOM	EMOTIONAL
SPLENDOR	TOGETHER	WHEREVER	ARTICHOKE	CLEARANCE	ENCHANTED
SPOONFUL	TOLERANT	WINDFALL	ASPARAGUS	CLOCKWISE	ENCOUNTER
SPORADIC	TOLERATE	WINDMILL	ASSISTANT	COMMITTEE	ENDURANCE
SPRINKLE	TOMORROW	WIRELESS	ASTROLOGY	COMMUNITY	ENTERTAIN
SQUADRON	TORTILLA	WITHDRAW	ASTRONAUT	COMPANION	EQUIPMENT
SQUIRREL	TRANQUIL	WORKLOAD	ASTRONOMY	COMPETENT	ESTABLISH
STALLION	TRANSFER	WORKSHOP	ATTENTION	COMPONENT	ESTIMATES
STAMPEDE	TRANSMIT	WRANGLER	AUTHORITY	CONCIERGE	ETIQUETTE
STANDARD	TRAVERSE	YOURSELF	AUTOGRAPH	CONDITION	EVAPORATE
STANDOFF	TREASURE	YOUTHFUL	AUTOMATIC	CONFIDENT	EVERGREEN
STRAIGHT	TRESPASS	ZUCCHINI	AVAILABLE	CONFUSING	EVERYBODY
STRAINER	TRIANGLE	ABSURDITY	BACKWARDS	CONNECTED	EXCELLENT
STRATEGY	TRICYCLE	ACCORDION	BADMINTON	CONSCIOUS	EXCLUSIVE
STRENGTH	TRILLION	ACROBATIC	BALLERINA	CONSONANT	EXECUTIVE
STRUGGLE	TROMBONE	ADMIRABLE	BANDSTAND	CONSTRUCT	EXHAUSTED
STUBBORN	TROPICAL	ADMISSION	BAROMETER	CONTAINER	EXISTENCE
STUDIOUS	TURNOVER	ADVANTAGE	BINOCULAR	CONTENDER	EXPANSION
STUNNING	TWEEZERS	ADVENTURE	BIOGRAPHY	CONTINENT	EXPENSIVE
SUBMERGE	ULTIMATE	ADVERSARY	BIOSPHERE	COROLLARY	EXPERTISE
SUBTRACT	UMBRELLA	ADVERTISE	BLEACHERS	CRANBERRY	EXTENSION
SUBURBAN	UNBROKEN	AEROSPACE	BLINDFOLD	CRITICISM	FANTASTIC

FINGERTIP	IMMEDIATE	MAGNITUDE	PARACHUTE	PUPPETEER	SAXOPHONE
FLOWERPOT	IMPATIENT	MANHATTAN	PARAGRAPH	QUADRUPLE	SCAPEGOAT
FLUCTUATE	IMPETUOUS	MARGARINE	PARAMETER	QUALIFIED	SCARECROW
FORBIDDEN	IMPLEMENT	MARKETING	PARCHMENT	QUALITIES	SCORECARD
FORESIGHT	IMPORTANT	MARMALADE	PARTITION	QUARTERLY	SCRIBBLER
FORGETFUL	IMPROMPTU	MARVELOUS	PARTRIDGE	QUICKSAND	SCRIMMAGE
FORTUNATE	IMPROVISE	MCPHERSON	PASSENGER	QUOTATION	SCULPTURE
FOUNTAINS	IMPULSIVE	MEANWHILE	PATCHWORK	RACETRACK	SECESSION
FRAMEWORK	INAUGURAL	MEDALLION	PEACETIME	RASPBERRY	SECLUSION
FRANCHISE	INCENTIVE	MENAGERIE	PENINSULA	REARRANGE	SECRETARY
FREQUENCY	INCLUSION	MESSENGER	PEPPERONI	REASONING	SECTIONAL
FURNITURE	INCORRECT	METEORITE	PERENNIAL	RECEPTION	SEEDLINGS
GATHERING	INFLUENCE	MEZZANINE	PERISCOPE	RECIPIENT	SEEMINGLY
GENERATOR	INGENIOUS	MICROFILM	PERMANENT	RECOGNIZE	SELECTION
GENTLEMAN	INGENUITY	MICROWAVE	PERPETUAL	RECOMMEND	SEMANTICS
GEOMETRIC	INSERTION	MIDSUMMER	PERSEVERE	RECONCILE	SEMICOLON
GOLDENROD	INSURANCE	MILLIPEDE	PETROLEUM	RECORDING	SENSATION
GRATITUDE	INTEGRITY	MILLSTONE	PHENOMENA	RECTANGLE	SENSITIVE
GREATBEND	INTELLECT	MINCEMEAT	PHYSICIAN	RECYCLING	SENTIMENT
GREYHOUND	INTERCEPT	MINIATURE	PINEAPPLE	REDUNDANT	SERIOUSLY
GROCERIES	INTERFERE	MISTLETOE	PISTACHIO	REFERENCE	SHEEPSKIN
GUIDELINE	INTERLUDE	MODERNIZE	PLENTIFUL	REFLECTOR	SHELLFISH
GYMNASIUM	INTERPRET	MONOLOGUE	PLUTONIUM	REGARDING	SHIPBOARD
GYMNASTIC	INTERRUPT	MOONLIGHT	PNEUMATIC	REGULATOR	SHIPSHAPE
HAILSTORM	INTERVIEW	MULTIPLEX	POLLUTION	REHEARSAL	SHIPWRECK
HAMBURGER	INTRICATE	MUNICIPAL	POLYESTER	REINFORCE	SIDEBURNS
HANDSHAKE	INTRODUCE	MYTHOLOGY	PORCELAIN	REITERATE	SIGNATURE
HAPPENING	INVENTION	NECESSARY	PORCUPINE	REJECTION	SIMILARLY
HAPPINESS	INVENTIVE	NECESSITY	POTASSIUM	RELEVANCE	SIMULATED
HARMONICA	INVISIBLE	NEGOTIATE	POTENTIAL	RELUCTANT	SINCERELY
HEADLIGHT	IRREGULAR	NEWSPAPER	POTPOURRI	REMOVABLE	SITUATION
HEADPHONE	JELLYFISH	NIGHTFALL	PRECEDENT	RENEWABLE	SKETCHPAD
HEARTBEAT	KNOWLEDGE	NOCTURNAL	PREEMPTED	REPRESENT	SLAPSTICK
HIBERNATE	LABYRINTH	NONLINEAR	PRESENTLY	REQUISITE	SNOWFLAKE
HIERARCHY	LANDOWNER	NORTHEAST	PRESIDENT	RESEMBLES	SOCIALIZE
HIGHLANDS	LANDSCAPE	NORTHWEST	PRETENDER	RESERVOIR	SOCIOLOGY
HIGHLIGHT	LAZYBONES	NOSTALGIA	PREVALENT	RESIDENCE	SOLICITOR
HISTORIAN	LEGENDARY	NUMERATOR	PRIMARILY	RESILIENT	SOLILOQUY
HONEYCOMB	LEISURELY	NUTRITION	PRIMITIVE	RESISTANT	SOLITAIRE
HONEYMOON	LIBRARIAN	OBEDIENCE	PRINCETON	RESONANCE	SOMETHING
HOROSCOPE	LIFESTYLE	OBLIGATED	PRINCIPAL	RESPECTED	SOURDOUGH
HORSEBACK	LIGHTNING	OBSESSION	PRIVILEGE	RESTRAINT	SOVEREIGN
HORSESHOE	LIMELIGHT	OCCUPANCY	PROCESSED	RIVERVIEW	SPACESHIP
HOURGLASS	LIMESTONE	OLFACTORY	PROFESSOR	ROADBLOCK	SPAGHETTI
HOUSEHOLD	LIMOUSINE	OPTOMETRY	PROJECTOR	SADDLEBAG	SPEARMINT
HOUSEWORK	LIVESTOCK	ORCHESTRA	PROMENADE	SAFEGUARD	SPECTATOR
HURRICANE	LOCKSMITH	OVERBOARD	PROMOTION	SAGEBRUSH	SPOKESMAN
HYDRAULIC	LONGEVITY	OVERWHELM	PROOFREAD	SANDPAPER	SPOTLIGHT
HYPNOTIZE	LUMINANCE	PALLADIUM	PROVISION	SATELLITE	SPRINKLER
IDENTICAL	LUXURIOUS	PANTOMIME	PROXIMITY	SATISFIES	STABILITY
IMAGINARY	MACHINERY	PAPERWORK	PUBLISHER	SATURATED	STAINLESS

STALEMATE	TELEGRAPH	UNDECIDED	WHOLESALE		
STARLIGHT	TELEPHONE	UNDERLINE	WHOLESOME		
STATEMENT	TELESCOPE	UNDERPASS	WONDERFUL		
STEAMBOAT	TEMPORARY	UNIVERSAL	WORKHORSE		
STOCKINGS	TENTATIVE	UNWILLING	WORLDWIDE		
STOPWATCH	TERRITORY	UTILITIES	WRESTLING		
STOREROOM	TESTIMONY	VALENTINE	YARDSTICK		
STRATEGIC	THEREFORE	VARIATION	YESTERDAY		
STREETCAR	THESAURUS	VEGETABLE	YOUNGSTER		
STRUCTURE	THRESHOLD	VENERABLE			
STYROFOAM	TIMETABLE	VENTILATE			
SUBMARINE	TOOTHPICK	VERSATILE			
SUBSCRIBE	TOUCHDOWN	VESTIBULE			
SUBSTANCE	TRADEMARK	VICTORIAN			
SUNFLOWER	TRADITION	VIDEOTAPE			
SUPERVISE	TRANSFORM	VOLUNTARY			
SURRENDER	TRANSLATE	VOLUNTEER			
SYMBOLISM	TRANSPORT	WALLPAPER			
TANGERINE	TURQUOISE	WAREHOUSE			
TECHNICAL	UNANIMOUS	WEDNESDAY			
TECHNIQUE	UNCERTAIN	WHIRLPOOL			

TRD-200206439
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 4, 2002

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Instant Game No. 750 "Texas Scratch Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 750 is "TEXAS SCRATCH CASH". The play style is "row, column, diagonal".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 750 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 750.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: X, 0, $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $30.00, $300.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 750 - 1.2D

PLAY SYMBOL	CAPTION
X	
0	
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$300	THR HUND

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 750 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $5.00, $10.00, $20.00.

H. Mid-Tier Prize - A prize of $30.00 or $300.

I. High-Tier Prize - There is no high-tier prize in this game.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (750), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 750-0000001-000.

L. Pack - A pack of "TEXAS SCRATCH CASH" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000-004 will be on the first page, tickets 005-009 will be on the next page and so forth with tickets 245-249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS SCRATCH CASH" Instant Game No. 750 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TEXAS SCRATCH CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) play symbols. If the player gets three "X" symbols or three "0" symbols in any row, column, or diagonal, the player will win the prize shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS SCRATCH CASH" Instant Game prize: $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $30.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "TEXAS SCRATCH CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TEXAS SCRATCH CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TEXAS SCRATCH CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

Figure 3: GAME NO. 750 - 4.0

4.0 Number and Value of Instant Prizes. There will be approximately 1,147,500 tickets in the Instant Game No. 750. The approximate number and value of prizes in the game are as follows:

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	128,516	8.93
$2	114,779	10.00
$3	59,672	19.23
$5	9,180	125.00
$10	2,301	498.70
$20	2,289	501.31
$30	1,149	998.69
$300	7	163,928.57

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.61. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 750 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 750, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200206440
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 4, 2002

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Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, October 30, 2002, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs and Prestige Manufactured Homes, Inc. to hear alleged violations of Sections 4(f), 6(B)(b), 6(B)(d), 6(B)(e), 7(j)(3), 7(j)(5), 7(j)(6), 14(d), 14(f), 14(l), 18(b), and 19(c) of the Act and Sections 80.50(b), 80.50(d), 80.50(e), 80.119(f)(1), 80.121(a)(1)(f), 80.121(a)(2)(c), 80.131(b), 80.132(3), and 80.204(b)(3) of the Rules. SOAH 332-03-0524. Department MHD2002001341-ZW.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200206521
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: October 9, 2002

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North Central Texas Council of Governments

Request for Proposals to Develop an Air Quality Public Awareness Campaign for the Dallas-Fort Worth Non-attainment Area

CONSULTANT PROPOSAL REQUEST

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals to develop an air quality public awareness campaign for the Dallas-Fort Worth (DFW) non-attainment area. The public awareness campaign will encourage public participation and support for the transportation elements of the State Implementation Plan (SIP) developed by the Texas Commission on Environmental Quality (TCEQ) and NCTCOG. The SIP includes numerous strategies that will enable the DFW area to meet federal air quality standards by 2007. Focus for this program is to support the Air Pollution Watch and Warning Program and supporting elements. The campaign will include paid advertising, public service announcements, media relations, special events, business community outreach, a program effectiveness survey, and other components agreed on by the Consultant and Project Steering Committee. The project is being funded with federal funds, which will provide 80 percent of the total project cost. A 20 percent

cash match will need to be secured by the Consultant from other funding sources.

Due Date

Proposals must be submitted no later than 5 p.m. Central Daylight Time on Friday, November 15, 2002, to Lynn Hayes, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Roxane Roberts, (817) 695-9244.

Contract Award Procedures

The firm or individual selected to perform this study will be recommended by a Project Review Committee. The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200206509
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: October 9, 2002

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Public Utility Commission of Texas

Notice of Amendment to Interconnection Agreement

On October 1, 2002, Southwestern Bell Telephone, LP d/b/a Southwestern Bell Telephone Company and Florida Telephone Services, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supp. 2002) (PURA). The joint application has been designated Docket Number 26717. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 26717. 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 November 1, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26717.

TRD-200206411
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

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Notice of Amendment to Interconnection Agreement

On October 1, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Florida Telephone Services, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supp. 2002) (PURA). The joint application has been designated Docket Number 26718. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 26718. 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 November 1, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26718.

TRD-200206409
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

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Notice of Amendment to Interconnection Agreement

On October 4, 2002, US Cellular and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26745. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 26745. 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 November 6, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26745.

TRD-200206457
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 7, 2002

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Notice of Amendment to Interconnection Agreement

On October 4, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Ft. Bend Long Distance d/b/a TXU Communications, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket

Number 26747. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 26747. 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 November 6, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26747.

TRD-200206458
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 7, 2002

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Notice of Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on September 30, 2002, for a certificate of convenience and necessity to construct a new double-circuit 138-kV transmission line in Crane and Upton Counties, Texas.

Docket Style and Number: Joint Application of LCRA Transmission Services Corporation and West Texas Utilities Company for a Certificate of Convenience and Necessity for a 138-kV Double-Circuit Transmission Line in Crane and Upton Counties. Docket Number 26707.

The Application: LCRA Transmission Services Corporation (LCRA) and West Texas Utilities Company (WTU) filed an application for a certificate of convenience and necessity to build a new double-circuit 138-kV transmission line in Crane and Upton Counties, Texas. LCRA and WTU proposed to construct a new double-circuit 138-kV transmission line approximately 1.58 miles in length. LCRA proposed to own this transmission line while WTU will operate and maintain the facilities under a multi-year agreement. LCRA's proposed 1.58- mile route would exit the east side of LCRA's Crane Substation, which is located on private property approximately 0.79 mile northeast of the City of Crane, and approximately 0.96 mile east of U.S. Highway 385. From the substation, the proposed route would head southeasterly for approximately 0.20 mile then turn eastward and continue in an easterly direction for approximately 1.38 miles to the McElroy/N. McCamey Cut-In. The 1.38-mile eastern segment would be located parallel to and approximately 0.30 mile north of State Highway 329 before that segment would intersect the cut-in point. The McElroy/N. McCamey Cut-In would be located on the McElroy to N. McCamey 69-kV transmission line, which currently connects the North McCamey Substation to the McElroy Substation. The McElroy/N. McCamey Cut-In would be located on private property approximately 2.27 miles east of the northeastern limits of the City of Crane. The entire route would be approximately 1.58 miles long and traverse the McElroy Oil Field in eastern Crane and western Upton counties, Texas.

LCRA and WTU stated that the proposed line is one of the transmission improvements necessary to address the need for improved transmission export capacity from the McCamey area. According to LCRA and WTU, this project will 1) help to alleviate equipment overloads resulting from wind generation capacity additions in the McCamey area; and 2) reduce power export limitations out of the McCamey area, allowing improved delivery of over 990 MW of renewable generation to be delivered to Texas Consumers of electricity. The application stated this specific transmission improvement was determined to be one of several necessary CCNs to be filed for the purpose of moving available wind generation.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll- free) 1-800-735-2989. All comments should reference Docket Number 26707.

TRD-200206416
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 3, 2002

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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 of an application on October 1, 2002, for retail electric provider (REP) certification, pursuant to § §39.101- 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Liberty Power Corp. for Retail Electric Provider (REP) certification, Docket Number 26721 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing 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 by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 25, 2002. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 26721.

TRD-200206408
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

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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 September 30, 2002, 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 V3 Global, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 26712 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the Dallas/Fort Worth exchanges currently served by Southwestern Bell Telephone and Verizon Southwest.

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 by phone at (512) 936-7120 or toll free at 1-800-782-8477 no later than October 23, 2002. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket No. 26712.

TRD-200206407
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

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Notice of Filing Pursuant to Substantive Rule §26.208

Revised notice is given to the public of Southwestern Bell Telephone Company's application filed with the Public Utility Commission of Texas (commission) on September 5, 2002 to introduce the Inform 911 Service feature, a non-basic service.

Docket Title and Number: Application of Southwestern Bell Telephone, L.P. doing business as Southwestern Bell Telephone Company for Administrative Change to its Integrated Services Tariff, Section 2 and its Private Line Service Tariff, Section 6 - Primary Rate ISDN SmartTrunk Inform 911 Service Introduction Pursuant to the commission's Substantive Rule §26.208. Docket Number 26599.

The Application: On September 5, 2002, Southwestern Bell Telephone L.P. doing business as Southwestern Bell Telephone Company (SWBT) filed an application to make an administrative change to its Integrated Services Tariff, Section 2, Sheet 2, 2.1, 13, 16 and 16.1 and its Private Line Service Tariff, Section 6, Index Sheet and Sheets 1 through 6. SWBT states the filing is submitted for the introduction of the Inform 911 Service feature, a non-basic service.

On or before November 19, 2002, persons wishing to comment on this application should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-298. All correspondence should refer to Docket Number 26599.

TRD-200206415
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 3, 2002

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Notice of Intent to File Pursuant to the Public Utility Commission of Texas Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), a long run incremental cost (LRIC) study pursuant to the commission's Substantive Rule §26.215

Docket Title and Number. Southwestern Bell Telephone Company Application for Approval of LRIC Study for Plexar-II Internet Protocal (IP) Pursuant to the commission's Substantive Rule §26.215 on October 10, 2002, Docket Number 26706.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 26706. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200206406
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

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Notice of Intent to File Pursuant to Public Utility Commission of Texas Substantive Rule §26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), a long run incremental cost (LRIC) study pursuant to the commission's Substantive Rule §26.214

Docket Title and Number. Valor Telecommunications of Texas, LP Application for Approval of LRIC Study for Unpublished Directory Listings Pursuant to the commission's Substantive Rule 26.214 on October 14, 2002, Docket Number 26727.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 26727. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200206417
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 3, 2002

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Notice of Interconnection Agreement

On October 1, 2002, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint, and Comm South Companies, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26722. The joint application and the underlying interconnection agreement is available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 26722. 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 November 1, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, 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, or by phone 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 26722.

TRD-200206410
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 2, 2002

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Notice of Interconnection Agreement

On October 2, 2002, Santa Rosa Telephone Cooperative, Inc. and Texas AM-Tel I, LP, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26729. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26729. 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 November 4, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26729.

TRD-200206419
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 3, 2002

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Notice of Interconnection Agreement

On October 3, 2002, Five Area Telephone Cooperative, Inc. and Sprint Spectrum doing business as Sprint PCS, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26740. The joint application and the underlying interconnection agreement is available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26740. 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 November 5, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26740.

TRD-200206453
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 7, 2002

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Notice of Interconnection Agreement

On October 3, 2002, Alenco Communications, Inc. doing business as ACI and Sprint Spectrum doing business as Sprint PCS, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26741. The joint application and the underlying interconnection agreement is available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26741. 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 November 5, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26741.

TRD-200206454
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 7, 2002

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Notice of Interconnection Agreement

On October 4, 2002, Choice Wireless, LC and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26744. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26744. 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 November 6, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26744.

TRD-200206456
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 7, 2002

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Notice of Interconnection Agreement

On October 4, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Metrocall, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26746. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26746. 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 November 6, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26746.

TRD-200206459
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 7, 2002

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Notice of Interconnection Agreement

On October 7, 2002, Florida Telephone Services, LLC and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26751. The joint application and the underlying interconnection agreement is available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26751. 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 November 7, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26751.

TRD-200206487
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 8, 2002

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Notice of Interconnection Agreement

On October 4, 2002, Choice Wireless, LC and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26752. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26752. 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 November 7, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26752.

TRD-200206488
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 8, 2002

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Notice of Interconnection Agreement

On October 7, 2002, Cumby Telephone Cooperative, Inc. and Sprint Spectrum doing business as Sprint PCS, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26753. The joint application and the underlying interconnection agreement is available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26753. 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 November 7, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26753.

TRD-200206489
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 8, 2002

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Notice of Interconnection Agreement

On October 7, 2002, Peoples Telephone Cooperative, Inc. and Sprint Spectrum doing business as Sprint PCS, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26754. The joint application and the underlying interconnection agreement is available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26754. 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 November 7, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's 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 action, 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, or by phone 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 26754.

TRD-200206486
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 8, 2002

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Stephen F. Austin State University

Notice of Extension of Consulting Services Contract

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of extension of the University's contract with consultant National Environmental Strategies, Inc., 2600 Virginia Avenue, NW, Suite 550, Washington, DC 20037. The original contract award was published in the September 7, 2001, issue of the *Texas Register*, Volume 26 Number 36 TexReg Pages 6803-7008. The original contract was in the sum of $90,000 plus expenses. The contract will be extended, on a month to month basis, through December 31, 2002, at an additional sum of $7,500 per month, or $30,000 total, plus expenses. There is a possibility that the contract may be renewed in January, 2003 for the period ending December 31, 2003. The potential renewal sum would be $90,000 for the year, plus expenses.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant. Services are provided on an as-needed basis.

For further information, please call (936) 468-4305.

TRD-200206428
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: October 3, 2002

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Texas A&M University, Board of Regents

Notice of Sale of Oil, Gas and Sulphur Lease

The Board of Regents of The Texas A&M University System, pursuant to provisions of V.T.C.A., Education Code, Chapter 85, as amended, and subject to all rules and regulations promulgated by the Board of Regents, offers for sale at public auction in Room 524, System Real Estate Office, The Texas A&M University System, John B. Connally Building, 301 Tarrow Drive, College Station, Texas, at 10:00 a.m., Wednesday, October 16. 2002, an oil, gas and sulphur lease on the following described land in Kleberg County, Texas. The property offered for lease contains 225.4 mineral acres, more or less, of land and more particularly described as follows:

Being a 225.4 acres, more or less, and described as Farm Lots Number 28, 29 and 30, in Farm Block 20 of the Kleberg Town & Improvement Company's Subdivision of the Suburbs of Escandido District, and Farm Lots Number 4 and 5, in Farm Block 1, King Addition of Kleberg County, Texas.

The minimum lease terms are as follows:

(1) Bonus: $150.00 per net mineral acre

(2) Royalty: 25%

(3) Delay Rental: $10.00 per net mineral acre.

(4) Primary term: Three years

(5) Commitment to Drill: Within first year

(6) Continuous Drilling Commitment: 120 days

(7) Net Mineral Acres: 225.4 (More or Less)

Highest bidder shall pay to the Board of Regents on the day of the sale 25% of the bonus bid, and the balance of the bid shall be paid to Board within 24 hours after notification that the bid has been accepted. All payments shall be in cash, certified check, or cashier's check as the Board may direct. Failure to pay the balance of the amount bid will result in the forfeiture of the 25% bonus paid to the Board. The Board of Regents of The Texas A&M University System, **RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS**. The successful bidder will be required to pay all advertising expenses.

Further inquiries concerning oil, gas and sulphur leases on System land should be directed to:

Dan K. Buchly

Assistant Vice Chancellor and Director of Real Estate

System Real Estate Office

The Texas A&M University System

John B. Connally Building, Suite 519

361 Tarrow Drive

College Station, Texas 77840-7896

(979) 458-6350

TRD-200206430
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: October 4, 2002

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Texas Department of Transportation

Public Notice - Texas Transportation Plan Update

The Texas Department of Transportation (TxDOT) is updating the Texas Transportation Plan, including a rail system plan as a component. In accordance with Transportation Code, §201.601, the Texas Transportation Plan is a statewide plan that will include elements such as:

Highways and turnpikes

Aviation

Mass Transportation

Railroads

Water traffic

Statewide public meetings will be held October 28, 2002, through November 21, 2002, from 3:00 p.m. - 8:00 p.m. in the following cities and locations:

10/28/02: **El Paso** - TxDOT District Office Conference Room

10/28/02: **Amarillo** - TxDOT District Office Conference Room

10/29/02: **Midland/Odessa** - Permian Basin Metropolitan Planning Organization Office

10/29/02: **Lubbock** - TxDOT District Office Conference Room

11/04/02: **Corpus Christi** - TBA - contact Michelle Conkle for information

11/07/02: **Laredo** - TxDOT District Office Conference Room

11/07/02: **Bryan/College Station** - Brazos Center

11/12/02: **San Antonio** - TxDOT District Office Conference Room

11/12/02: **Weslaco** - Best Western Palm Aire

11/14/02: **Austin** - TxDOT District Office Conference Room

11/14/02: **Arlington** - Elzie Odom Recreation Center

11/18/02: **San Angelo** - TxDOT District Office Conference Room

11/18/02: **Houston** - TxDOT District Office Conference Room

11/19/02: **Abilene** - TxDOT District Office Conference Room

11/19/02: **Beaumont** - TxDOT District Office Conference Room

11/21/02: **Tyler** - TxDOT District Office Conference Room

11/21/02: **Lufkin** - TBA - contact Michelle Conkle for information

Public input will help TxDOT evaluate and refine the data collected thus far for the Texas Transportation Plan update. Citizens of Texas need to join TxDOT at the public meeting held in their area to express comments on the goals and objectives in this important plan that will have a long ranging impact on transportation options in Texas.

For further information, contact Michelle Conkle, TxDOT Transportation Planning and Programming Division, at (512) 486-5023.

TRD-200206462
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: October 8, 2002

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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

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