Texas Register

Volume 14, Number 94, December 26, 1989

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The Texas Register (ISSN 0362-4781) is published twice each week 100 times a year except March 7, 1989, June 2, 1989, July 7, 1989, November 28, 1989, and December 29, 1989. Issues will be published by the Office of the Secretary of State.

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Information Available: The eight 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
- Emergency Sections—sections adopted by state agencies on an emergency basis
- Proposed Sections—sections proposed for adoption
- Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after proposal publication date
- Adopted Sections—sections adopted following a 30-day public comment period
- Open Meetings—notices of open meetings

In addition—miscellaneous information required to be published by statute or provided as a public service

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes accumulative 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 a 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 6 (1981) is cited as follows: 6 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: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 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, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code, sections number, or TRD number.

Texas Administrative Code

The Texas Administrative Code (TAC) is the approved, collected volumes of Texas administrative rules.

How To Cite: Under the TAC scheme, each agency 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;

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Part I. Comptroller of Public Accounts
34 TAC §3.198—6850
Opinions

**JM-1118 (RQ-1797).** Request from Steven D. Wolens, Chairman, Business and Commerce Committee, Texas House of Representatives, Austin, concerning obligation of a real estate licensee with regard to disclosure that a previous or current occupant of real property had or has AIDS or HIV infection.

*Summary of Opinion.* A real estate licensee who discloses knowledge that a previous or current occupant of real property had or has AIDS or HIV infection would violate the federal Fair Housing Amendments Act of 1988. Consequently, HIV infection of a current or former occupant of real property cannot be disclosed to a potential transferee under the Texas Deceptive Traced Practices Act. The federal and state constitutions protect individual privacy from governmental intrusion, not intrusion by private individuals.

TRD-8912144

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Request for Opinions

**RQ-1890.** Request from H. Tati Santiesteban, Chairman, Senate Natural Resources, El Paso, concerning whether a private company which contracts with the state to maintain medical records is subject to the Open Records Act, Texas Civil Statutes, Article 6252-17a.

**RQ-1891.** Request from Robert M. Saunders, Chairman, House Environmental Affairs, Austin, concerning authority of a city to pay the travel and per diem expenses of the spouses of city officers and employees who attend conventions.

**RQ-1892.** Request from Stephen C. Howard, Orange County Attorney, Orange County Courthouse, Orange, concerning authority to set the salaries of the Orange County child support office.

**RQ-1893.** Request from Bryan M. Perot, Executive Director, Polygraph Examiners Board, Austin, concerning consent to a polygraph examination of a child.

TRD-8912143
Appointments Made December 6, 1989

To be a member of the 1989 Joint Task Force on Waste Management Policy for a term at the pleasure of the Governor: Tommy G. Salome, P.O. Box 1175, Waco, Texas 76703. Mr. Salome is being appointed to a new position pursuant to Senate Rule 165, 71st Legislature.

To be a member of the 1989 Joint Task Force on Waste Management Policy for a term at the pleasure of the governor: Robert Frame, 630 Wentworth Drive, Richardson, Texas 75081-5622. Mr. Frame is being appointed to a new position pursuant to Senate Rule 165, 71st Legislature.

To be a member of the Interstate Oil Compact Commission for terms at the pleasure of the Governor: Regulatory Practices Committee: David W. Branch, P. O. Box 2197, Houston, Texas 77252; and Julian G. Martin, 515 Congress, Suite 1910, Austin, Texas 78701. Enhanced Recovery Committee: James E. Russell, P. O. Box 2618, Abilene, Texas 79604.

Appointments Made December 13, 1989

To be Judge of the 363rd Judicial District Court, Dallas County until the next general election and until her successor shall be duly elected and qualified: Faith Johnson, 1104 Sandalwood Lane, DeSoto, Texas 75115. Mrs. Johnson will be replacing Judge Randy Isenberg of Dallas, who resigned.

To be Judge of the 172nd Judicial District Court, Jefferson County until the next general election and until his successor shall be duly elected and qualified: Donald J. Floyd, 8148 Friar Point Drive, Port Arthur, Texas 77642. Judge Floyd will be replacing Judge Thomas A. Thomas of Beaumont, who resigned.

To be Justice of the Second District Court of Appeals to be effective January 1, 1990 until the next general election and until his successor shall be duly elected and qualified: Sam J. Day, 2813 Hartwood, Fort Worth, Texas 76109. Mr. Day will be replacing Judge David Kelmer of Fort Worth, who resigned.

To be a member of the Texas University System Board of Regents for a term to expire February 1, 1993: Clyde C. Waddell, Jr., 3223 South Loop 289, Suite 230, Lubbock, Texas 79423. Mr. Waddell will be filling the unexpired term of George William Worth of San Antonio, who was rejected by the Senate.

To be a member of the Texas State University System Board of Regents for a term to expire February 1, 1995: Thomas Radford Kowalski, 4505 Malaga, Austin, Texas 78759. Mr. Kowalski will be replacing Lee Drain of Dallas, whose term expired.

To be a member of the Texas Air Control Board for a term to expire September 1, 1995: Calvin B. Parnell, Jr., 1103 Pershing, College Station, Texas 77840. Dr. Parnell will be replacing Dr. Otto Kunze of College Station, whose term expired.

To be a member of the Texas Air Control Board for a term to expire September 1, 1995: Warren H. Roberts, 1706 Woodridge Court, Arlington, Texas 76013. Mr. Roberts will be replacing Hubert Oxford, III of Beaumont, whose term expired.

To be a member of the Texas Board of Aviation for a term to expire February 1, 1991: Walter H. Baxter, III, P.O. Box 8175, Weslaco, Texas 78596. General Baxter is being appointed to a new position pursuant to House Bill 95, 71st Legislature, Regular Session.

To be a member of the Texas Board of Aviation for a term to expire February 1, 1991: William M. Knowles, Jr., P.O. Box 550, Palestine, Texas 75801. Mr. Knowles is being appointed to a new position pursuant to House Bill 94, 71st Legislature, Regular Session.

To be a member of the Crime Stoppers Advisory Council for a term to expire September 1, 1991: Donald Ray Green, 275 Beach Drive, Lumberton, Texas 77655. Mr. Green will be replacing Todd Malcolm Smith of Hallettsville, whose term expired.

To be a member of the Real Estate Research Advisory Committee for a term to expire January 31, 1995: Richard S. Seline, 5188 Winnrock, Houston, Texas 77075. Mr. Seline will be replacing James Fatheree of Houston, whose term expired.

To be a member of the Boards for Lease-Texas Parks and Wildlife Commission, for a term to expire September 1, 1991: George C. (Tim) Hixon, 111 West Lynwood, San Antonio, Texas 78212. Mr. Hixon is being reappointed.

To be a member of the Coastal Water Authority Board of Directors for a term to expire April 1, 1991: R. Wayne Smith, 3905 Edgebrook, Baytown, Texas 77521. Mr. Smith is being reappointed.

To be a member of the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 1995: George F. Middlebrook, III, 3412 Baywood Drive, Nacogdoches, Texas 75961. Mr. Middlebrook is being reappointed.

To be a member of the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 1995: Harold Clayton Maxwell, 911 South Meadow Drive, Diboll, Texas 75941. Mr. Maxwell will be replacing Salah Craig of Henderson, whose term expired.

To be a member of the Underground Storage Tank Advisory Committee for a term to expire February 1, 1995: Bill R. White, 4607 17th Street, Lubbock, Texas 79415. Mr. White is being appointed to a new position pursuant to House Bill 183, 71st Legislature, Regular Session.

To be a member of the Underground Storage Tank Advisory Committee for a term to expire February 1, 1995: James Curtis DuPriest, 3600 Harrisburg, Houston, Texas 77003. Mr. DuPriest is being appointed to a new position pursuant to House Bill 183, 71st Legislature, Regular Session.

To be a member of the Underground Storage Tank Advisory Committee for a term to expire February 1, 1995: Leland M. Freeman, 302 Industrial Drive, Victoria, Texas 77901. Mr. Freeman is being appointed to a new position pursuant to House Bill 183, 71st Legislature, Regular Session.

To be a member of the Underground Storage Tank Advisory Committee for a term to expire February 1, 1991: A. E. "Gene" Shull, P.O. Box 6673, Tyler, Texas 75711. Mr. Shull is being appointed to a new position pursuant to House Bill 183, 71st Legislature, Regular Session.

To be a member of the Family Farm and Ranch Advisory Board for a term to expire January 31, 1995: Robert G. Van Winkle, Jr., Route 5, Box 167, Sulphur Springs, Texas 75482. Mr. Van Winkle will be replacing Harold R. Pruitt of Slidell, whose term expired.

To be a member of the Texas Rio Grande Compact Commissioner for a term to expire June 9, 1995: Jack Hammond, 908-B Bellas Artes, El Paso, Texas 79912. Mr. Hammond will be replacing Jesse B. Gilmer of El Paso, whose term expired.

To be a member of the State Seed and Plant Board for a term to expire October 6, 1991: Edward C. A. Rungie, 1104 Deacon Drive, College Station, Texas 77840.
Runge is being reappointed.

To be a member of the Radiation Advisory Board for a term to expire April 16, 1993: William Robert Underdown, Jr., P.O. Box 228, Brunl, Texas 78344. Mr. Underdown will be filling the unexpired term of Jay H. Reynolds of Floresville, who was rejected by the Senate.

To be a member of the Texas Agricultural Finance Authority Board of Directors for a term to expire January 1, 1991: Steven C. Verett, HCR 2, Box 35, Ralls, Texas 79357. Mr. Verett will be filling the unexpired term of John E. Birdwell, Jr. of Lubbock, who resigned.

To be a member of the Texas Commission on the Arts for a term to expire August 31, 1995: William James Hill, 1908 River Oaks Boulevard, Houston, Texas 77019. Mr. Hill will be replacing Nancy Nelson of Dallas, whose term expired.

To be a member of the Texas Commission on the Arts for a term to expire August 31, 1995: Ruth Fox, 6010 Cape Coral, Austin, Texas 78746. Mrs. Fox will be replacing Rolling Khoory of Waco, whose term expired.

To be a member of the Educational Excellence Committee for a term to expire February 1, 1993: Donald Reynolds, P.O. Box 379, Goodrich, Texas 77335. Mr. Reynolds is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the Educational Excellence Committee for a term to expire February 1, 1995: Jack Fields, Sr., P.O. Box 2375, Humble, Texas 77347. Mr. Fields is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the Educational Excellence Committee for a term to expire February 1, 1993: Dan Frank Long, Route 5, Box 105, Georgetown, Texas 78628. Dr. Long is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the Educational Excellence Committee for a term to expire February 1, 1995: Winston C. Power Jr., 7015 Westchester Drive, Dallas, Texas 75205. Dr. Power is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the Educational Excellence Committee for a term to expire February 1, 1995: Patti Clapp, 9419 Trailhail, Dallas, Texas 75238. Mrs. Clapp is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the State Board of Registration for Professional Engineers for a term to expire September 26, 1995: Earnest F. Gloya, 3317 River Road, Austin, Texas 78703. Dr. Gloya will be replacing Robert Navarro of El Paso, whose term expired.

To be a member of the Texas High-Speed Rail Authority for a term to be determined later: John B. Connally, 5718 Westheimer, #2220, Houston, Texas 77057. Governor Connally is being appointed to a new position pursuant to Senate Bill 1190, 71st Legislature, Regular Session.

To be a member of the Texas High-Speed Rail Authority for a term to be determined later: Charles J. Wylly, Jr., 8080 North Central Expressway, #1100, Dallas, Texas 75206-1806. Mr. Wylly is being appointed to a new position pursuant to Senate Bill 1190, 71st Legislature, Regular Session.

To be a member of the Texas Commission on Law Enforcement Officer Standards and Education for a term to expire August 30, 1995: J.C. Mosier, 3222 Westvick, Houston, Texas 77082. Sergeant Mosier will be replacing Robert J. Thomas of Houston, whose term expired.

To be a member of the Texas Commission on Law Enforcement Officer Standards and Education for a term to expire August 30, 1995: David L. Walker, 704 West End Street, Terrell, Texas 75160. Chief Walker will be replacing Walter H. Rankin of Houston, whose term expired.

To be a member of the Texas Department of Licensing and Regulation Board for a term to expire February 1, 1995: Manuel Marrufo, 13014 Hawnwood, El Paso, Texas 79902. Mr. Marrufo is being appointed to a new position pursuant to House Bill 863, 71st Legislature, Regular Session.

To be a member of the Texas National Research Laboratory Commission for a term to expire February 1, 1993: Morton H. Meyerson, 4545 Cole Avenue, Suite 400, Dallas, Texas 75235. Dr. Meyerson will be filling the unexpired term of Thomas W. Luce, III of Dallas, who resigned.

To be a member of the Chairman of the Texas National Research Laboratory Commission at the pleasure of the Governor: Morton H. Meyerson of Dallas. Mr. Meyerson will be replacing Thomas W. Luce, III who resigned.

To be a member of the State Board of Vocational Nurse Examiners for a term to expire September 6, 1991: Lee C. Detenbeck, M.D., P.O. Box 7971, Horsehoe Bay, Texas 78654. Dr. Detenbeck will be filling the unexpired term of Dr. Salvador Ortiz-Carrillo of Corpus Christi, who resigned.

To be a member of the On-Site Wastewater Treatment Research Council for a term to expire September 1, 1990: Richard Thomas Fraser, 6901 Peppervine Cove, Austin, Texas 78750. Mr. Fraser is being appointed to a new position pursuant to House Bill 32, 70th Legislature.

To be a member of the On-Site Wastewater Treatment Research Council for a term to expire September 1, 1991: B. L. Carlile, P.O. Box 2677, College Station, Texas 77841. Dr. Carlile is being reappointed.

To be a member of the On-Site Wastewater Treatment Research Council for a term to expire September 1, 1990: Mark V. Lowry, 15125 Co. Road 272, East Bernard, Texas 77435-0031. Mr. Lowry is being appointed to a new position pursuant to House Bill 32, 70th Legislature.

To be a member of the Texas Structural Pest Control Board for a term to expire February 1, 1995: Robert W. Jenkins, Sr., H.C.O. 4, Box 142, Marble Falls, Texas 78654. Mr. Jenkins is being appointed to a new position pursuant to House Bill 3187, 71st Legislature, Regular Session.

To be a member of the Texas Structural Pest Control Board for a term to expire February 1, 1995: David Melass, 44 Lake Road, P.O. Box 636, Lake Jackson, Texas 77566. Mr. Melass is being appointed to a new position pursuant to House Bill 3187, 71st Legislature, Regular Session.

To be a member of the State Board of Pharmacy for a term to expire August 31, 1995: David Lee Franklin, 3445 Hanover, Dallas, Texas 75225. Mr. Franklin will be replacing Harold Pieratt, Jr. of Giddings, whose term expired.

To be a member of the Texas State Board of Podiatry Examiners for a term to expire July 10, 1995: Ben Clark, Jr., D.P.M., 6115 Hunters View, Dallas, Texas 75232. Dr. Clark is being reappointed.

To be a member of the Texas State Board of Podiatry Examiners for a term to expire July 10, 1995: Peter J. Williams, D.P.M., 6143 Broadmeadow, S.Antonio, Texas 78240. Dr. Williams will be replacing Dr. Jerry Patterson of San Antonio, whose term expired.

To be a member of the Texas State Board of Public Accountancy for a term to expire January 31, 1991: I. Lee Wilson, 400 Chaparral Lane, Rockwall, Texas 75087. Mr. Wilson is being appointed to a new position pursuant to Senate Bill 329, 71st Legislature, Regular Session.

To be a member of the Texas Rehabilitation Commission for a term to expire August 31, 1995: Alvia Kent Waldrep, Jr., 1424 Mockingbird, Plano, Texas 75075. Mr. Waldrep will be replacing Ernestine Washington of Beaumont, whose term expired.

To be a member of the State Committee of Examiners for Speech Pathology and Audiology for a term to expire August 31, 1995: Carol N. Gore, 649 Mary Stuart Drive, El Paso, Texas 79912. Ms. Gore will be replacing Dr. Kathryn Stream of Dallas, whose term expired.

To be a member of the Board of Tax Professional Examiners for a term to expire March 1, 1995: Harris Osvalt, Route 8, Box 905, Tyler, Texas 75703. Mr. Osvalt will be replacing Ray M. Comett of
Angleton, whose term expired.

To be a member of the State Board of Veterinary Medical Examiners for a term to expire August 26, 1995: Alton F. Hopkins, D.V.M., 7219 Stonetraill, Dallas, Texas 75230. Dr. Hopkins will be replacing Dr. Edward S. Murray of Spur, whose term expired.

Appointments Made December 14, 1989

To be a member of the Statewide Health Coordinating Council for a term to expire September 1, 1991: Evelyn Hoover Close, 2017 Texas, Perryon, Texas 79070. Mrs. Close is being reappointed.

To be a member of the Texas State Board of Examiners of Dietitians for a term to expire September 1, 1995: Jeanne Marie Vier, 1508 Marshall Lane, Austin, Texas 78703. Mrs. Vier will be replacing Mrs. Dale Smith of De Leon, whose term expired.

To be a member of the Executive Committee for the Center of Rural Health Initiatives for a term to expire August 31, 1991: Michael Paul Ellis, 109 Lila Lane, Daingerfield, Texas 75638. Mr. Ellis is being appointed to a new position pursuant to House Bill 18, 71st Legislature, first called session.

To be a member of the Executive Committee of the Center for Rural Health Initiatives for a term to expire August 31, 1993: Lynda Calcote, 3499 Santa Monica, Abilene, Texas 79605. Mrs. Calcote is being appointed to a new position pursuant to House Bill 18, 71st Legislature, first called session.

Appointments Made December 15, 1989

To be a member of the Teacher's Professional Practices Commission for a term to expire August 31, 1991: Hazel Moye, 1418 Larksprur, McAllen, Texas 78501. Mrs. Moye is being reappointed.

To be a member of the Teacher's Professional Practices Commission for a term to expire August 31, 1991: Drusilla M. Knight, 3409 Crestlake, Corpus Christi, Texas 78415. Mrs. Knight is being reappointed.

To be a member of the Teacher's Professional Practices Commission, for a term to expire August 31, 1991: Jimmye R. Hancock, 925 34 South East, Paris Texas 75460. Mrs. Hancock is being reappointed.

To be a member of the Teacher's Professional Practices Commission for a term to expire August 31, 1991: Audene Allman, 10010 Villa Lea, Houston, Texas 77071. Dr. Allman is being reappointed.

To be a member of the Teacher's Professional Practices Commission for a term to expire August 31, 1991: Thomassine Sparks, 712 Santa Anita, Kingsville, Texas 78363. Mrs. Sparks is being reappointed.

To be a member of the Teacher's Professional Practices Commission for a term to expire August 31, 1991: Carroll Bert洛克特, 3207 79th Street, Lubbock, Texas 79423. Mr.洛克特 is being reappointed.

To be a member of the Teacher's Professional Practices Commission for a term to expire August 31, 1991: Evelyn Campbell Reed, 302 Cardinal, San Antonio, Texas 78209. Mrs. Reed is being reappointed.

To be a member of the Teacher's Professional Practices Commission for a term to expire August 31, 1991: Susan Tuminello, 15250 Gray Ridge #117, Houston, Texas 77082. Mrs. Tuminello is being reappointed.

To be a member of the Teacher's Professional Practices Commission for a term to expire August 31, 1991: Charles W. Blanton, 2241 Dorrington Drive, Dallas, Texas 75208. Dr. Blanton is being reappointed.

Issued in Austin, Texas on December 19, 1989.

TRD-8912137 William P. Clements, Jr. Governor of Texas

Appointments Made December 15, 1989

To be a member of the Drug Policy Subcommittee of the Governor's Drug Abuse Task Force for terms at the pleasure of the Governor: Jerry L. Padalina, U.S. Customs Service, 5850 San Felipe, Houston, Texas 77057, (replacing John Burns); Ronald F. Ederer, 501 Executiove, Suite 100, El Paso, Texas 79902, (replacing Christopher L. Milner); and Travis P. Johnson, Police Department, City of Laredo, P.O. Box 3365, Laredo, Texas 78044-3365, (new position).

To be a member of the Texas Rehabilitation Commission for a term to expire August 31, 1991: Diane Doehne Rath, 4330 Medical Drive, Suite 110, San Antonio, Texas 78229. Mrs. Rath will be filling the unexpired term of Ray A. Wilkerson of Austin, who was appointed to a different position on the commission.

To be a member of the Texas Rehabilitation Commission for a term to expire August 31, 1993: Ray A. Wilkerson, 5906 Lookout Mountain, Austin, Texas 78731. Mr. Wilkerson is being appointed to a different position on the commission, replacing Wendell D. Faulkner of Pecos.

Issued in Austin, Texas on December 19, 1989.

TRD-8912146 William P. Clements, Jr. Governor of Texas

To be a member of the Underground Storage Tank Advisory Committee for a term to expire February 1, 1993: Joe M. Nall, P.O. Box 8214, Dallas, Texas 75205. Mr. Nall is being appointed to a new position pursuant to House Bill 183, 71st Legislature.

To be a Judge of the 97th Judicial District Court, Archer, Clay and Montague Counties, to be effective January 8, 1990; until the next general election and until his successor shall be duly elected and qualified: Roger E. Towery, 2112 Rawhide Trail, Henrietta, Texas 76365. Mr. Towery will be replacing Frank J. Douthitt of Henrietta, who resigned.

To be a member of the Texas Higher Education Coordinating Board for a term to expire August 31, 1995: Mary Beth Williamson, 303 Park Hill Drive, San Antonio, Texas 78212. Mrs. Williamson will be replacing Larry E. Temple of Austin, whose term expired.

To be a member of the Texas Higher Education Coordinating Board for a term to expire August 31, 1995: W. Mike Baggett, 10116 Estate Lane, Dallas, Texas 75238. Mr. Baggett will be replacing Ray Clymer of Wichita Falls, whose term expired.

To be a member of the Lower Colorado River Authority Board of Directors for a term to expire February 1, 1993: Neal L. Norris, Jr., P.O. Box 1715, Kingsland, Texas 78639. Mr. Norris will be filling the unexpired term of John Kenneth Dixon of Sunrise Beach, who resigned.

To be a member of the Agriculture Resources Protection Authority for a term to expire January 1, 1991: Elvin Lee Caraway, 2120 Tremont, Fort Worth, Texas 76107. Mr. Caraway will be appointed to a new position pursuant to Senate Bill 489, 71st Legislature, Regular Session.

To be a member of the Agriculture Resources Protection Authority for a term to expire February 1, 1991: Othal E. Brand, Sr., P.O. Box 1840, McAllen, Texas 78501. Mayor Brand is being appointed to a new position pursuant to Senate Bill 489, 71st Legislature, Regular Session.

To be a member of the College Opportunity Act Committee for a term to expire February 1, 1991: John Walton Caddock, Jr., 6525 Belmont Street, Houston, Texas 77005-3803. Mr. Caddock is being appointed to a new position pursuant to Senate Bill 94, 71st Legislature, Regular Session.

Issued in Austin, Texas on December 19, 1989.
Emergency Sections

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

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of bold text. [Brackets] indicate deletion of existing material within a section.

TITLE 7. BANKING AND
SECURITIES
Part V. Office of
Consumer Credit
Commissioner
Chapter 85. Rules of
Operation for Pawnshops

7 TAC §85.2
The Office of Consumer Credit Commissioner is renewing the effectiveness of the emergency adoption of new §85.2, for a 60-day period effective December 30, 1989. The text of new §85.2 was originally published in the August 29, 1989, issue of the Texas Register (14 TexReg 4358).

Issued in Austin, Texas on December 19, 1989.

TRD-8912142
Al Endsley
Consumer Credit
Commissioner
Office of Consumer Credit
Commissioner

Effective date: December 30, 1990
Expiration date: February 28, 1990
For further information, please call: (512) 479-1280

TITLE 16. ECONOMIC
REGULATION
Part I. Railroad
Commission of Texas
Chapter 3. Oil and Gas
Division
Conservation Rules and
Regulations

16 TAC §3.50
The Railroad Commission of Texas is renewing the effectiveness of the emergency adoption of new §3.50, for a 60-day period effective December 30, 1989. The text of new §3.50 was originally published in the September 5, 1989, issue of the Texas Register (14 TexReg 4505).

Issued in Austin, Texas on December 20, 1989.

TRD-8912204
Ciri Payne
Assistant Director, Legal
Division, General Law
Railroad Commission of
Texas

Effective date: December 30, 1989
Expiration date: February 28, 1990
For further information, please call: (512) 463-6941

TITLE 22. EXAMINING
BOARDS
Part XXII. Texas State
Board of Public
Accountancy
Chapter 521. Fee Schedule

22 TAC §521.5
The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §521.5, for a 60-day period effective December 19, 1989. The text of amended §521.5 was originally published in the August 25, 1989, issue of the Texas Register (14 TexReg 4265).

Issued in Austin, Texas on December 18, 1989.

TRD-8912123
Cynthia Haigrove
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: December 19, 1989
Expiration date: February 17, 1990
For further information, please call: (512) 450-7066

22 TAC §521.8
The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §521.8, for a 60-day period effective December 19, 1989. The text of amended §521.8 was originally published in the August 25, 1989, issue of the Texas Register (14 TexReg 4265).

Issued in Austin, Texas on December 18, 1989.

TRD-8912122
Cynthia Haigrove
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: December 19, 1989
Expiration date: February 17, 1990
For further information, please call: (512) 450-7066

22 TAC §521.9
The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of new §521.9, for a 60-day period effective December 19, 1989. The text of new §521.9 was originally published in the August 25, 1989, issue of the Texas Register (14 TexReg 4265).

Issued in Austin, Texas on December 18, 1989.

TRD-8912125
Cynthia Haigrove
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: December 19, 1989
Expiration date: February 17, 1990
For further information, please call: (512) 450-7066

The Texas State Board of Public Accountancy adopts an emergency basis an amendment to the emergency new §521.9, which was originally published in the August 25, 1989, issue of the Texas Register (14 TexReg 4265). An emergency exists because of a recent ruling that the FBI will begin charging an additional amount for each criminal background fingerprint investigation, required prior to issuance of each CPA certificate. The board's current fee will not cover this additional expense.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to certification fee.

§521.9. Certification Fee. The fee for the initial issuance of a CPA certificate pursuant to the Act shall be $25 [$20].

Issued in Austin, Texas on December 18, 1989.

TRD-8912124
Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: December 18, 1989
Expiration date: February 17, 1990
For further information, please call: (512) 450-7066

Emergency Sections December 26, 1989 14 TexReg 6823
TITLE 31 Natural Resources and Conservation.
Part IX Texas Water Commission.
Chapter 291. Water Rate.
Subchapter A. General Provisions.


It is the position of the commission that the provision of adequate water supply service and sewage treatment service directly impacts the public health, safety, and welfare. Because there is a need to maintain regulatory standards which will assure rates, fees, operations, and services that are just and reasonable to consumers and retail public utilities, and which will protect the public health, safety, and welfare, the commission finds that an urgent need exists to adopt these new sections on an emergency basis in order to have a regulatory system in effect that implements the statutory revisions that were effective on September 1, 1989.

The new sections are adopted in response to House Bill 1808, 71st Legislature, 1989, which in pertinent part, amended the Texas Water Code, Chapter 13. The new sections establish the substantive regulations which reflect the policies of the Texas Water Commission, as established in House Bill 1808, regarding the assurance of water and sewer rates, fees, operations, and services which are just and reasonable. The new sections also outline the procedures for presentation of these matters to the commission for consideration and determination.

31 TAC §§291.1-291.14

The repealed sections are adopted on an emergency basis under House Bill 1808, 71st Legislature, 1989, amending the Texas Water Code, Chapter 13, and the Texas Water Code, §§5.103, 5.105, and 13.041, which provided the commission with the rulemaking authority relating to the regulation of retail public utilities' rates, fees, operations, and services.

§291.1. Purpose and Scope of this Chapter.

§291.2. Severability Clause.

§291.3. Definitions of Terms.

§291.4. Cooperative Corporation Rebates.

§291.5. Filing of Documents.

§291.6. Signatories to Applications.

§291.7. Filing Fees.

§291.8. Administrative Completeness.

§291.9. Agreements to be in Writing.

§291.10. Request for Public Hearing.

§291.11. Informal Proceedings.


§291.13. Record of Proceeding; Right to Hearing.


Issued in Austin, Texas, on December 20, 1989.

TRD-8912181
Jim Hailey
Director, Legal Division
Texas Water Commission

Effective date: December 20, 1989.

Expiration date: April 19, 1990

For further information, please call: (512) 463-8069

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31 TAC §§291.1-291.16

The new sections are adopted on an emergency basis under the authority of House Bill 1808, 71st Legislature, 1989, amending the Texas Water Code, Chapter 13, and the Texas Water Code, §§5.103, 5.105, and 13.041, which provide the commission with the rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

§291.1. Purpose and Scope of this Chapter. This chapter is intended to establish a comprehensive regulatory system under Chapter 13 to assure rates, operations, and services which are just and reasonable to the consumer and the retail public utilities, and to establish the rights and responsibilities of both the retail public utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status. This chapter shall also govern the procedure for the institution, conduct, and determination of all water and sewer rate causes and proceedings before the Texas Water Commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

§291.2. Severability Clause. The adoption of this chapter will in no way preclude the commission from altering or amending it in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion or upon application of any utility. Furthermore, this chapter will not relieve in any way a retail public utility or customer from any of its duties under the laws of this state or the United States. If any provision of this chapter is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable. The commission may make exceptions to this chapter for good cause.

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

Affected person—Any retail public utility affected by any action of the regulatory authority; any person or corporation, whose utility service or rates are affected by any proceeding before the regulatory authority; or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

Affiliated interest or affiliate—
(A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;
(B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;
(C) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;
(D) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;
(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;
(F) any person or corporation that the commission, after notice and hear-
ing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

Agency—Any state board, commission, department, or officer having state-wide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions for higher education) which makes rules or determines contested cases.

Allocations—For all retail public utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities, or between municipalities and unincorporated areas, where such items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas.

Base rate—The portion of a consumer's utility bill which is paid for the opportunity of receiving utility service, excluding stand-by fees, which does not vary due to changes in utility service consumption patterns.

Class of service or customer class—A description of utility as nature of use or type of rate.

Code—The Texas Water Code.

Commission—The Texas Water Commission.

Corporation—Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the Texas Water Code.

Customer—Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any utility.

Executive director—The executive director of the Texas Water Commission.

Facilities—All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

Incident of tenancy—Water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

License—The whole or part of any commission permit, certificate, registration or similar form of permission required by law.

Licensing—The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the Texas Water Commission pursuant to its authority under the Texas Water Code.

Member—A record owner of a fee simple title to property in an area served by a water supply or sewer service corporation. The term does not include a person or entity that holds an interest in property solely as security for the performance of an obligation, or that only builds on or develops the property for sale to others. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

Municipality—A city, existing, created, or organized under the general, home rule, or special laws of this state.

Municipally-owned utility—Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

Permanent installation—Any installation that is constructed or placed on and permanently affixed to a foundation, and which is, or will be, used or occupied on a permanent full-time basis. A manufactured home or prefabricated structure shall qualify as a permanent installation only if it is installed on a foundation system according to regulations of the Texas Department of Labor and Standards or is otherwise impractical to move and has the wheels, axles, and hitch or towing device removed, and if it is connected to a permanent water and sewer system.

Person—Any natural person, partnership, cooperative corporation, association, or public or private organization of any character other than an agency or municipality.

Premises—A tract of land or real estate including buildings and other appurtenances thereon.

Public utility—The definition of public utility is that definition given to water and sewer utility in this subchapter.

Purchased sewage treatment—Sewage treatment purchased from a source outside the retail public utility's system to meet system load requirements.

Rate—Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in the Texas Water Code, $13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

Ratepayer—Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name residential utility service is carried.

Retail public utility—Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

Retail water or sewer utility service—Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

Special service—Any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by retail public utilities or water or sewer service suppliers in the performance of their duties under the Texas Water Code to their customers, employees, other utilities, and the public, as well as the interchange of facilities between two or more of the utilities or water or sewer service suppliers.

Tap fee—A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee may include the cost of physically tapping the main and installing meters, meter boxes, fittings and other materials, labor, setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings may be added. Other charges, such as extension fees or contributions in aid of construction (CIAC) are not to be included in a tap fee.

Tariff—The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.

Test year—The most recent 12 month period for which representative operating data for a retail public utility are available. A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate
filing. Utility—The definition of utility is that definition given to water and sewer utility in this subchapter.

Water and sewer utility—Any person, corporation, cooperative corporation, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

Water supply or sewer service corporation—Any nonprofit, member-owned, member-controlled corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Texas Civil Statutes) that provides potable water or sewer service for compensation.

Wholesale water or sewer service—Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

§291.4. Cooperative Corporation Rebates. Nothing in this chapter prevents a cooperative corporation from returning to its members the whole or any part of the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

§291.5. Filing of Documents.

(a) Filing with commission. All documents relating to any proceeding pending or to be instituted before the commission shall be filed with the commission unless admitted as part of the record in a hearing. Unless otherwise provided in this chapter, an original and three copies shall be filed. Except as provided in §291.8 of this title (relating to Administrative Completeness) documents shall be deemed filed only when actually received, accompanied by the filing fee, if any, required by statute or commission rules.

(b) Where to file. All filings and other communications with the commission pursuant to this chapter shall be delivered to the Rates Section, Water Utilities Division, Texas Water Commission, 1700 North Congress Avenue, P.O. Box 13087, Austin, Texas 78711-3087.

§291.6. Signatories to Applications.

(a) All applications shall be signed by a corporate officer, partner, proprietor, their attorney-at-law, or other person having representative capacity to transact business on behalf of the retail public utility. If the signor is not a corporate officer, partner, proprietor, or their attorney-at-law, the application must contain written proof that such signature is duly authorized.

(b) Applications shall contain a certification stating that the person signing has personally examined and is familiar with the information submitted in the application and that the information is true, accurate, and complete.

§291.7. Filing Fees. Each application, petition, or complaint which is intended to institute a proceeding before the commission shall be accompanied by the appropriate filing fee as required by the Texas Water Code, §5.235 and §13.4521, and costs of mailing notice, if any.

(1) A rate change application filed with the commission under the Texas Water Code, §13.187, must be accompanied by the appropriate filing fee as follows:

(A) fewer than 100 connections—$50;

(B) 100-200 connections—$100;

(C) 201-500 connections—$200; or

(D) more than 500 connections—$500.

(2) An application for a certificate of public convenience and necessity under Texas Water Code, §13.244 must be accompanied by an application fee of $100.

(3) An application for sale, assignment, or lease of a certificate of convenience and necessity under the Texas Water Code, §13.251, or notice of intent to sell, assign, lease, or rent a water or sewer system under the Texas Water Code, §13.301, must be accompanied by the appropriate fee as follows:

(A) fewer than 100 connections—$50;

(B) 100-200 connections—$100;

(C) 201-500 connections—$200; or

(D) more than 500 connections—$500.

§291.9. 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 before the commission shall be enforced, unless it shall have been reduced to writing and signed by the parties or representatives authorized by these sections 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.

§291.10. Request for Public Hearing.

(a) A request for public hearing un-
der this chapter must be made in writing and submitted by an affected person to the commission within the time period specified by the notice. The commission may extend the time allowed for submitting a request for public hearing.

(b) The written request should contain the following information:

(1) the name, mailing address, and phone number of the person making the request;

(2) a brief description of the interest of the person making the request; and

(3) a brief description of how the application, if granted, would adversely affect such interest.

(c) For purposes of this subsection, an affected person is one who is determined by the commission to have an interest different from that of the general public that may be adversely affected by action taken on the application.

(d) If the commission determines the request for public hearing is in compliance with this section, or that a public hearing would serve the public interest, the commission shall conduct a public hearing.

(e) At least 20 days before the date set for the hearing, the commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The commission shall hold a hearing on the petition at the time and place stated in the order. On completion of the hearing, the commission shall render a written decision.

(g) If, after the preliminary investigation, the commission determines that no probable grounds exist for the complaint alleged in the petition, the commission shall dismiss the petition.

§291.11. Informal Proceedings.

(a) Any hearing involving a retail public water or sewer utility as defined in §291.3 of this title (relating to Definitions of Terms) may be conducted as an informal proceeding when, in the judgment of the presiding officer, the conduct of a hearing under informal procedures will:

(1) result in savings of time or costs to all parties;

(2) lead to a negotiated or agreed settlement of facts or issues in controversy; and

(3) not prejudice the rights of any party.

(b) If during an informal proceeding, all parties reach a negotiated or agreed settlement which in the judgment of the presiding officer settles all facts or issues in controversy, the proceeding shall not be a contested case under the Texas Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and no proposal for decision nor detailed findings of fact and conclusions of law are required.

(c) If the parties do not reach a negotiated or agreed settlement of all facts and issues in controversy, the presiding officer may adjourn the informal proceeding and reconvene it as a contested case hearing under standard hearing procedures as otherwise provided for in this chapter.

§291.12. Burden of Proof. In any proceeding involving any proposed change of rates, the burden of proof shall be on the provider of water and sewer services to show that the proposed change, if proposed by the retail public utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable. In any other matters or proceedings, the burden of proof is on the moving party.

§291.13. Record of Proceeding; Right to Hearing. A record shall be kept of all proceedings before the regulatory authority, unless all parties waive the keeping of the record.


(a) The commission may issue emergency orders, with or without a hearing:

(1) to compel a water or sewer service provider that had obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act. These orders may contain provisions requiring specific utility actions to ensure continuous and adequate utility service and compliance with regulatory guidelines;

(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; and/or,

(3) to establish reasonable compensation for the temporary service required under subsection (a)(2) of this section and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(b) If an order is issued under subsection (a) of this section without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.

§291.15. Jurisdiction of Municipality; Surrender of Jurisdiction. The governing body of a municipality by ordinance may elect to have the commission exercise exclusive original jurisdiction over the utility rates, operation, and services of utilities, within the incorporated limits of the municipality. The governing body of a municipality that surrenders its jurisdiction to the commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

§291.16. Applicability of Commission Service Rates Within the Corporate Limits of a Municipality. The commission's rules relating to service and response to requests for service will apply to utilities operating within the corporate limits of a municipality unless the municipality adopts its own rules. These rules include Subchapters E and F of this chapter. This agency hereby certifies that the sections as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 20, 1989.

TRD-691225

Jim Haley

Director, Legal Division

Texas Water Commission

Effective date: December 20, 1989.

Expiration date: April 19, 1990

For further information, please call: (512) 463-8069

Subchapter B. Utility Rates, Rate Making, and Rate/Tariff Changes.

31 TAC §§291.21-291.32

The repealed sections are adopted on an emergency basis under House Bill 1808, 71st Legislature, 1989, amending the Texas Water Code, Chapter 13, and the Texas Water Code §§5.103, 5.105, and 13.041, which provides the commission with the rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

§291.21. Form and Filing of Tariffs.

§291.22. Applicant's Notice of Intent to Change Rates.

§291.23. Time Between Filings.
$291.24. Jurisdiction over Affiliated Interests.

$291.25. Rate Change Applications, Testimony, and Exhibits.


$291.27. Request for a Review of a Rate Change Pursuant to the Texas Water Code, §13.187(b).


$291.29. Interim Rates.

$291.30. Escrow of Proceeds Received Under Rate Increase.

$291.31. Cost of Service.

$291.32. Rates Design.

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Texas Water Commission

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For further information, please call: (512) 463-9069

The new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

$291.21. Form and Filing of Tariffs.

(a) Approved tariff. No utility shall directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission. A utility may charge the rates proposed under the Texas Water Code, §13.187(a), notice of intent, after the proposed effective date, unless the rates are suspended or the commission sets interim rates.

(b) Requirements as to size, form, identification, and filing of tariffs.

(1) Tariffs filed with applications for certificates of convenience and necessity.

(A) Every public utility shall file with the commission four copies of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a public utility. The tariff shall be on the form the commission prescribes or another form acceptable to the commission.

(B) Every water supply or sewer service corporation shall file with the commission four copies of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a retail public utility.

(2) A public utility's approved tariff may not be changed or amended without commission approval. The executive director or his designated representative may approve the following changes to tariffs:

(A) service rules and policies;

(B) changes in fees for customer deposits, meter tests, and late charges, provided they do not exceed the maximum allowed by the sections; and

(C) implementation of purchased water or sewage treatment or use fee provision previously approved by the commission.

(3) The utility shall file three copies of each revision. Each revision shall be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(4) Each rate schedule must state the territory, city, or county wherein said schedule is applicable.

(5) Tariff sheets are to be numbered consecutively. Each sheet shall show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

(c) Composition of tariffs. A utility's tariff shall contain sections setting forth:

(1) a table of contents;

(2) a list of the cities and counties, and subdivisions or systems, in which service is provided;

(3) the certificate of convenience and necessity number under which service is provided;

(4) the rate schedules;

(5) the service rules and regulations, including forms of the service agreements, if any;

(6) the extension policy; and

(7) an approved water rationing plan.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission shall include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the application number, date of the order, a list of tariff sheets filed, and any other necessary information. All tariff sheets shall comply with all other sections in this chapter and shall include only changes ordered. The effective date and/or wording of the tariffs shall comply with the provisions of the order.

(e) Symbols for changes. Each proposed tariff sheet shall contain notations in the right-hand margin indicating each change made on these sheets. Notations to be used are:

(A) to denote a change in regulations;

(B) to denote discontinued rates or regulations;

(C) to denote the correction of an error made during a revision (the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision);

(D) to denote a rate increase;

(E) to denote a new rate or regulation;

(F) to denote a rate reduction; and

(G) to denote a change in text, but no change in rate or regulation. In addition to symbols for changes, each changed provision in the tariff shall clearly show the exact number of lines being changed.

(f) Availability of tariffs. Each utility shall make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees shall lend assistance to persons requesting information and afford these persons an opportunity to examine any of such tariffs upon request. The utility shall provide copies
of any portion of the tariffs at a reasonable cost to reproduce such tariff for a requesting party.

(g) Rejection. Any tariff filed with the commission and found not to be in compliance with these sections shall be so marked and returned to the utility with a brief explanation of the reasons for rejection.

(h) Change by other regulatory authorities. Tariffs which are filed to reflect changes in rates or regulations set by other regulatory authorities shall include a copy of the order or ordinance authorizing the change.

(i) Purchased water or sewage treatment. A utility which purchases water or sewage treatment or pays water use fees to an underground water conservation district may include a provision in the rate schedule of its tariff for making adjustments in utility rates due to changes in water use fees or in costs of purchase water or sewage treatment. This provision must be approved by the commission in a rate proceeding to be effective.

(1) Purchased water or sewage treatment or water use fee provisions must be included in the utility’s approved tariff in order for a utility to make a tariff change using this procedure.

(2) Purchased water or sewage treatment or water use fee provisions must explicitly state how the adjustment to the tariffed rates will be calculated.

(3) Following approval of the purchased water or sewage treatment or water use fee provisions, a water or sewer utility proposing a change in its tariff pursuant to this section shall notify the commission in writing of the proposed change prior to the effective date for implementing the changed rates.

(4) Notice to the customers which may be in the form of a billing insert shall contain the effective date of the change, the present rates, the new rates, and the change in charges to the utility for purchased water or sewage treatment or water use fees. The notice shall also include the following language: "This tariff change is being implemented in accordance with the utility’s approved (purchased water)(purchased sewer)(water use fee) adjustment clause to recognize (increases) (decreases) in the (water use fee) (cost of purchased)(water)(sewage treatment). The cost of these charges to the utility’s customers will not exceed the (increased) (decreased) cost of (the water use fee)(purchased)(water)(sewage treatment)."

(5) Notice to the commission shall include a copy of the notice sent to the customers, proof that the cost of purchased water or sewage treatment has changed by the stated amount, and the calculations and assumptions used to determine the new rates.

(6) Purchased water or sewage treatment provisions may not apply to contracts or transactions between affiliated interests.

(j) Effective date. The effective date of a tariff change is the date of approval by the executive director or his designated representative or the commission, unless otherwise specified in a commission order or rule. The effective date of a proposed rate increase under the Texas Water Code, §13.187, is the proposed date on the notice unless suspended and must comply with the requirements of §291.8(b) of this title (relating to Administrative Completeness).

(k) Tariffs filed by water supply or sewer service corporations. By no later than March 1, 1990, every water supply or sewer service corporation shall file, for informational purposes only, one copy of its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff shall include all rules and regulations relating to or affecting the rates, utility service or extension of service, or product, or commodity furnished and shall specify the CCN number and in which counties or cities it is effective.

§291.22. Notice of Intent To Change Rates.

(a) In order to change rates which are subject to the commission's original jurisdiction, the applicant utility shall file with the commission an original and three copies of a completed application for rate change and shall give notice of the proposed rate change by mail or hand delivery to all affected utility customers at least 30 days prior to the proposed effective date. On the notice to customers shall be printed in prominent lettering the words "notice of rate change request." The notice shall contain the following information:

1. The current rates, the proposed rates, the effective date of the proposed rate change, the increase or decrease requested over test year revenues as adjusted for test year customer growth and annualization of test year rate increases, stated as a dollar amount, and the classes of utility customers affected. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates; and

2. The following language: "These rates will apply to service received after the effective date listed above. If, within 60 days of the effective date, the Texas Water Commission receives a complaint from any affected municipality, or from the lesser of 1,000 or 10% of the ratepayers, a hearing will be set to determine if the proposed rates are reasonable. Complaints should be mailed to the Rates Section, Water Utilities Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Unless complaints are received from the lesser of 1,000 or 10% of the ratepayers or the Texas Water Commission sets a hearing on its own motion, no hearing will be held. In the event that the application is set for hearing, the specific rates requested by the utility may be decreased or increased by order of the commission. If the commission orders a lower rate to be set, the utility may be ordered to refund or credit against future bills all sums collected during the pendancy of the rate proceeding in excess of the rate finally ordered plus interest."

(b) The governing body of a municipality or a political subdivision which provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision shall provide individual written notice to each ratepayer eligible to appeal (i.e., whose rates have been changed) who resides outside the boundaries within 30 days after the date of the final decision on a rate change. The notice must include at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained.

(c) Notices may be mailed separately, or may accompany customer billings.

(d) The applicant utility shall mail or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 30 days prior to the effective date of the proposed change. The commission may also require that notice be mailed or delivered to other affected persons or agencies.

(e) Proof of notice in the form of an affidavit stating that proper notice was mailed to customers and affected municipalities, and stating the dates of such mailing, shall be filed with the commission by the applicant utility as part of the rate change application.

§291.23. Time Between Filings. A utility or two or more utilities under common control or ownership may not file a notice of intent to increase rates more than once in a 12-month period except:

1. To implement an approved purchase water pass through provision;

2. To adjust the rates of a newly acquired utility system; or

3. Unless the regulatory authority determines that a financial hardship exists. If the commission requires the utility to deliver a corrected statement of intent, it shall not be considered a violation of the 12-month filing requirement.

§291.24. Jurisdiction Over Affiliated Interests. The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the comm-
mission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including, but in no way limited to, accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

§291.25. Rate Change Applications, Testimony and Exhibits.

(a) A change in rates under the Texas Water Code, §13.187, is initiated by the submission of a rate filing package which consists of a rate/tariff change application form, or such other forms as prescribed by the commission, a statement of intent to change rates, and a copy of the notice the applicant has provided to customers and other affected parties.

(b) A utility filing for a change in rates under the Texas Water Code, §13.187, shall be prepared to go forward at a hearing on the data which has been submitted under subsection (a) of this section and sustain the burden of proof of establishing that its proposed changes are just and reasonable.

(c) An original and three copies of the rate filing package shall be submitted and filed with the commission. In the event that the proposed rate change becomes the subject of a hearing, the commission may require or allow, in addition to copies of the rate filing package, prefiled testimony and exhibits in support of the rate change request.

(d) The book data included in the schedules and information prepared and submitted as part of the filing shall be reported in a separate column or columns. All adjustments to book amounts shall also be shown in a separate column or columns so that books amounts, adjustments thereto, and adjusted amounts will be clearly disclosed, and any separation and allocation between interstate and intrastate operations shall be fully disclosed and clearly explained.

(e) All intervenors or protestants shall file the specified number of copies of their prepared testimony, if required, and exhibits within the time period specified by the hearings examiner assigned to the application.

(f) If required to prefile testimony, the executive director shall prefile, except for good cause, the prepared testimony and exhibits of its witnesses eight days prior to the final hearing but shall not otherwise be required to present its case prior to that time, except upon the granting of motions for discovery.

(g) The items in the rate filing package may be modified on a showing of good cause.


(a) Failure to properly complete the rate application or comply with the notice requirements and proof of notice requirements will result in suspension of the rate change by the commission or the executive director or his designated representative. The utility shall not renotify its customers of a new proposed effective date until the utility receives written notification from the commission that all deficiencies have been corrected.

(b) The effective date of any rate change may be suspended by the commission if the utility does not have a certificate of convenience and necessity or a completed application pending with the commission to obtain a certificate or to transfer a certificate of convenience and necessity.


(a) Petitions for review of rate actions filed by ratepayers pursuant to the Texas Water Code, §13.187(b), shall contain the original petition for review with the required signatures. Each signature page of a petition should contain in legible form the following information for each signatory ratepayer:

(1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action; and

(2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer (the petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer).

(b) Ratepayers may initiate a review of a rate change application by filing individual complaints rather than joint petitions. Each complaint should contain the information required in subsection (a) of this section.

(c) In order for a review to be initiated under subsection (a) or (b) of this section, complaints must be received from a total of 1,000 or 10% of the affected ratepayers, whichever is less.

§291.28. Action on Notice of Rate Change Pursuant to the Texas Water Code, §13.187(b). The commission may conduct a public hearing on any application.

(1) If, within 60 days after the effective date of the rate change, the commission receives a complaint from any affected municipality, or from the lesser of 1,000 or 10% of the ratepayers of the utility over whose rates the commission has original jurisdiction, or on its own motion, the commission shall set the matter for hearing. If after hearing, the commission finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the commission shall determine the rates to be charged by the utility and shall fix the rates by order.

(2) If a hearing is scheduled, the commission may require the utility to provide notice of the time and place of the hearing to its customers through a billing insert or separate mailing.

(3) If the commission does not receive sufficient customer complaints or if the executive director does not request a hearing within 120 days after the effective date, the utility's proposed tariff will be reviewed for compliance with the code and the provisions of this chapter. If the proposed tariff complies with the code and the provisions of this chapter, it shall be stamped approved by the executive director or his designated representative and a copy returned to the utility. The executive director or commission may request additional information from any utility in the course of evaluating the rate/tariff change request, and the utility is required to provide that information within 20 days of receipt of the request, unless a different time is agreed to. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the commission may disallow the unsupported expenses.

(5) If the commission sets a rate different from that proposed by the utility in its notice of intent, the utility shall include in its first billing at the new rate a notice to its customers of the rate set by the commission including the following statement: "The Texas Water Commission, after public hearing, has established the following rates for utility service."

(6) If the commission conducts a hearing, it may establish rates different from those currently being charged or proposed to be charged by the utility, but the total annual revenue increase resulting from the commission's rates shall not exceed the revenue increase that would have been produced by the proposed rates except for the inclusion of reasonable rate case expenses. The commission may reclassify a portion of a utility's proposed rates as a capital improvement surcharge if the revenues are to be used for capital improvements or are to service debt on capital items at a rate exceeding typical rates of depreciation and interest.

§291.29. Interim Rates.

(a) The commission may on a motion by the executive director or by the
appellant under the Texas Water Code, §13.043(a), (b), or (f), as amended, establish interim rates to remain in effect until a final decision is made.

(b) At any time after the filing of a statement of intent to change rates under the Texas Water Code, §13.187, as amended, the executive director may petition the commission to set interim rates to remain in effect until further commission action or a final rate determination is made. After a hearing is convened, any party may petition the commission to set interim rates.

(c) Interim rates may be established by the commission in those cases under the commission’s original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility’s customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.

(d) In making a determination under subsection (c) of this section, the commission may limit its consideration of the matter to oral arguments of the affected parties and may:

(1) set interim rates not lower than the authorized rates prior to the proposed increase nor higher than the requested rates;

(2) deny interim rate relief;

(3) require that all or part of the requested rate increase be deposited in an escrow account in accordance with rules set forth in §291.30 of this title (relating to Escrow of Proceeds Received Under Rate Increase); or

(4) remand the request for interim rates to the Office of Hearings Examiners for an evidentiary hearing on interim rates. If so authorized by the commission’s remand order, the presiding hearing examiner may issue a non-appealable interlocutory ruling setting interim rates to remain in effect until a final rate determination is made by the commission.

(e) The establishment of interim rates does not preclude the commission from establishing, as a final rate, a different rate from the interim rate.

(f) Unless otherwise agreed to by the parties to the rate proceeding, the utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission.

(g) Unless otherwise agreed to by the parties to the rate proceeding, the utility shall be authorized by the commission to collect the difference, in a reasonable number of monthly installments, from its customers for the amounts by which the rate finally ordered exceeds the interim rates.

(h) The utility must provide a notice including the interim rates set by the commission with the first billing at the interim rates with the following wording: “The Texas Water Commission has established the following interim rates to be in effect until the final decision on the requested rate change or until another interim rate is established.”

(i) If the commission sets a final rate that is higher than the interim rate, the utility shall be allowed to collect the difference between the interim rate and the final rate unless otherwise agreed to by the parties to the rate proceeding. If the commission establishes interim rates or an escrow account, the commission must make a final determination on the rates within 215 days after the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility.

§291.30. Escrow of Proceeds Received Under Rate Increase.

(a) During the pendency of its rate proceeding, a retail public utility or other entity subject to the original or appellate jurisdiction of the commission may be required to deposit all or part of the rate increase into an interest-bearing escrow account with a federally insured financial institution, under such terms and conditions as determined by the commission.

(b) The retail public utility shall file an original and three copies of a completed escrow agreement between the retail public utility and the financial institution with the commission for review and approval by the executive director or his designated representative.

(c) If necessary to meet the retail public utility’s current operating expenses, or for other good cause shown, the executive director may authorize the release of funds to the retail public utility from the escrow account during the pendency of the proceeding.

(d) The executive director, except for good cause shown, shall give all parties-of-record at least 10 days’ notice of an intent to release funds from the escrow account. Any party may file a motion with the commission to enjoin the executive director’s proposed release of escrow funds or to establish different terms and conditions for the release of escrowed funds.

(e) Upon the commission’s establishment of final rates, all funds remaining in the escrow account shall be released to the retail public utility or ratepayers in accordance with the terms of the commission’s order.

§291.31. Cost of Service.

(a) Components of cost of service. Rates are based upon a utility’s cost of rendering service. The two components of cost of service are allowable expenses and return on invested capital.

(b) Allowable expenses. Only those expenses which are reasonable and necessary to provide service to the ratepayers shall be included in allowable expenses. In computing a utility’s allowable expenses, only the utility’s historical test year expenses as adjusted for known and measurable changes will be considered.

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to, the following general categories:

(A) Operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service (payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense shall not be allowed as an expense for cost of service except as provided in the Texas Water Code, §113.185(e));

(B) Depreciation expense based on original cost and computed on a straight line basis over the useful life of the asset as approved by the commission. Depreciation shall be allowed on all currently used depreciable utility property owned by the utility except for property provided by explicit customer agreements or funded by customer contributions in aid of construction. Depreciation on all currently used and useful developer or governmental utility contributed property shall be allowed in the cost of service;

(C) Assessments and taxes other than income taxes;

(D) Federal income taxes on a normalized basis (federal income taxes shall be computed according to the provisions of the Texas Water Code, §13.185(f), if applicable);

(E) The reasonable expenditures for ordinary advertising, contributions, and donations; and

(F) Funds expended in support of membership in professional or trade associations, provided such associations contribute toward the professionalism of their membership.

(2) Expenses not allowed. The following expenses shall not be allowed as a component of cost of service:

(A) Legislative advocacy expenses, whether made directly or indirectly, including, but not limited to, legislative advocacy expenses included in professional or trade association dues;
(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended in promotion of political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) funds promoting increased consumption of water;

(G) additional funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A)-(F) of this paragraph;

(H) costs, including, but not limited to, interest expense of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission; and

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines.

(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) Rate of return. The commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and shall fix the rate of return in accordance with the following principles.

(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

(B) The commission shall consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility’s services, the efficiency of the utility’s operations, and the quality of the utility’s management, along with other relevant conditions and practices.

(C) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital. In each case, the commission shall consider the utility’s cost of capital, which is the composite of the cost of the various classes of capital used by the utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt.

(ii) Equity capital. The cost of equity capital shall be based upon a fair return on its value. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital shall be based on a fair return on its value.

(II) Preferred stock capital. The cost of preferred stock capital is the annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.

(2) Invested capital; rate base. The rate of return is applied to the rate base. The rate base, sometimes referred to as invested capital, includes the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public. Components to be included in determining the overall rate base are as follows:

(A) original cost, less accumulated depreciation, of utility plant used by and useful to the utility in providing service.

(i) Original cost shall be the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor.

(ii) Reserve for depreciation is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life of the assets. Depreciation shall be computed on a straight line basis over the expected useful life of the item or facility.

(iii) The original cost of plant, property, and equipment acquired from an affiliated interest shall not be included in invested capital except as provided in the Texas Water Code, §13.185(e).

(iv) Utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in original cost or invested capital.

(B) working capital allowance to be composed of, but not limited to, the following:

(iii) a reasonable allowance up to one-eighth of total annual operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, and payoffs (operations and maintenance expense does not include depreciation, other taxes, or federal income taxes).

(3) Items not included in rate base. Unless otherwise determined by the commission, for good cause shown, the following items will not be included in determining the overall rate base.

(A) Miscellaneous items. Certain items which include, but are not limited to, the following:

(i) accumulated reserve for deferred federal income taxes;

(ii) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;

(iii) contingency and/or property insurance reserves;

(iv) contributions in aid of construction; and

(v) other sources of cost-free capital, as determined by the commission.

(B) Construction work in progress. Under ordinary circumstances the rate base shall consist only of those items which are used and useful in providing service to the public. Under exceptional circumstances, the commission may include construction work in progress in rate base to the extent that the utility has proven that:

(i) the inclusion is necessary to the financial integrity of the utility; and

(ii) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress shall not be allowed for any portion of a major project which the utility has failed to prove was efficiently and prudently planned and managed.

§291.32. Rate Design.

(a) General. In fixing the rates of a utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a
reasonable return on its invested capital used and useful in rendering service to the public, over and above its reasonable and necessary operating expenses, and preserve the financial integrity of the utility.

(b) Conservation. In order to promote conservation, water and sewer utilities shall not apply rate structures which offer discounts or encourage increased usage by residential customers.

(c) Volume charges. Charges for additional usage above the base rate shall be based on metered usage over and above any volume included in the base rate rounded up or down as appropriate to the nearest 1,000 gallons or 100 cubic feet, or the fractional portion of the usage.

(d) Surcharges for capital improvements. In a rate proceeding, the commission may authorize collection of additional revenues from the customers to provide funds for capital improvements necessary to provide facilities capable of providing adequate and continuous utility service.

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Jim Haley
Director, Legal Division
Texas Water Commission

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Subchapter C. Ratemaking Appeals.

31 TAC §§291.41-291.44

The repealed sections are adopted on an emergency basis under House Bill 1808, 71st Legislature, 1989, amending Texas Water Code, Chapter 13, and the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the ratemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.


§291.43. Refunds During Pendency of Appeal.


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31 TAC §§291.41-291.45

The new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the ratemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.


(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally-owned utility, but does include privately-owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and accompanied by the filing fee as required by the Texas Water Code, §5.235, and by serving a copy of the petition on all parties to the original proceeding. The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body.

(b) An appeal under the Texas Water Code, §13.043(b), must be initiated within 120 days after the effective day of the rate change. An appeal is initiated by filing an original and three copies of a petition for review with the commission and by filing a copy of the petition with the entity providing service not less than 30 days prior to filing with the commission. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have changed and who are eligible to appeal under subsection (b) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water or sewer utility rates to the commission:

(1) a nonprofit water supply or sewer service corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Texas Civil Statutes, Article 1434a);

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality; and

(4) a district or authority created under the Texas Constitution, Article III,

§52, or Article XVI, §59, that provides water or sewer service to household users. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries.

(d) In an appeal under Texas Water Code, §13.043(b), each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is carried.

(e) The commission shall hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:

(1) include reasonable expenses incurred in the appeal proceedings;

(2) establish the effective date;

(3) order refunds or allow surcharges to recover lost revenues;

(4) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings;

(5) establish interim rates to be in effect until a final decision is made.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility and accompanied by the filing fee as required by the Texas Water Code, §5.235.

(g) An appeal under the Texas Water Code, §13.043(g), must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the applicant or member of the water supply or sewer service corporation's decision affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service. The appeal must be accompanied by a $100 filing fee as required by the Texas Water Code, §5.235.


(a) Petitions for review of rate actions filed pursuant to the Texas Water Code, §13.043(b), shall contain the original
petition for review with the required signatures. Each signature page of a petition shall contain in legible form the following information for each signatory ratepayer:

(1) a clear and concise statement that the petition is an appeal of a specific rate action affecting the water or sewer service supplied in question as well as a concise description and date of that rate action;

(2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer. The petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer;

(3) the effective date of the decision being appealed;

(4) the basis of the request for review of rates; and

(5) any other information the commission may require.

(b) Ratepayers may initiate an appeal by filing individual complaints rather than joint petitions. Each complaint shall contain the information required in subsection (a) of this section.

(c) Regardless of whether an appeal is initiated under subsections (a) or (b) of this section, complaints must be received from a total of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal, whichever is less.

(d) A filing fee is not required for appeals or complaints filed under the Texas Water Code, §13.043(b).

§291.43. Refunds During Pendency of Appeal. A utility which is appealing the action of the governing body of a municipality under the Texas Water Code, §13.043, shall not be required to make refunds of any over-collections during the pendency of the appeal.


(a) Ratepayers seeking relief under the Texas Water Code, §§11.036-11.041 and 12.013 should include in a written petition to the commission, the following information:

(1) the petitioner's name;

(2) the name of the water supplier from which water supply service is received or sought;

(3) the specific section of the code under which petitioner seeks relief, with an explanation of why petitioner is entitled to receive or use the water;

(4) that the petitioner is willing and able to pay a just and reasonable price for the water;

(5) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(6) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not just and reasonable or is discriminatory.

(b) Water suppliers seeking relief under the Texas Water Code, §§11.036-11.041 and 12.013, should include in a written petition for relief to the commission, the following information:

(1) petitioner's name;

(2) the name of the ratepayer to whom water supply service is rendered;

(3) the specific section of the code under which petitioner seeks relief, with an explanation of why petitioner is entitled to the relief requested;

(4) that the petitioner is willing and able to supply water at a just and reasonable price; and

(5) that the price demanded by petitioner for the water is just and reasonable and is not discriminatory.

(c) If the petition for relief is accompanied by the deposit stipulated in the code, the executive director shall have a preliminary investigation of allegations contained in the petition made and determine whether or not there are probable grounds for the complaint alleged in the petition. The commission may require the petitioner to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission.

(d) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint alleged in the petition, the commission shall enter an order setting a time and place for a hearing on the petition.

§291.45. Rates Charged by a Municipality to a District.

(a) A district created pursuant to the Texas Constitution, Article XVI, §59, which district is located within the corporate limits or the extraterritorial jurisdiction of the municipality and which receives water or sewer service or whose residents receive water or sewer service from a municipality may by filing a petition with the commission appeal the rates charged by the municipality if the resolution, ordinance, or agreement of the municipality consenting to the creation of the district required the district to purchase water or sewer service from the municipality.

(b) The commission shall hear the appeal de novo and the municipality shall have the burden of proof to establish that the rates are just and reasonable.

(c) After the commission establishes just and reasonable rates, the municipality may not increase those rates without approval of the commission. A municipality desiring to increase rates must provide the commission with updated information in a format specified in the current rate data package developed by the Rates Section.

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Subchapter D. Records and Reports.

• 31 TAC §§291.71-291.75

The repealed sections are adopted on an emergency basis under House Bill 1908, 71st Legislature, 1989, amending the Texas Water Code, Chapter 13, and the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

§291.71. General Reports.


§291.73. Water and Sewer Utilities Annual Reports.

§291.74. Duplicate Information.

§291.75. Maintenance and Location of Records.

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• 31 TAC §§291.71-291.76

The new sections are adopted on an emergency basis under the authority of the Texas Water Code, §§5.103, 5.105, and 13.041 which provides the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

§291.71. General Reports.
(a) Who shall file. The recordkeeping, reporting, and filing requirements listed in this section shall apply to all water and sewer service providers operating in the State of Texas to the extent authorized by the Texas Water Code, Chapter 13.

(b) Initial reporting. Periodic reporting shall commence with an initial filing, unless otherwise specified in this subchapter, such that the initial annual report shall reflect the transactions and condition of the utility for the most recent fiscal quarter ending on or prior to January 1, 1988. All initial reports shall, unless otherwise specified in this section, be filed within 90 days of this date or after issuance of commission instructions or forms.

(c) Report attestation. All reports submitted to the commission shall be attested to by an officer or manager of the utility under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the utility’s operation.

(d) Due dates of reports. All reports must be received by the commission on or before the following due dates unless otherwise specified in this subchapter:

1. Annual service and financial reports—on or before the date specified by the executive director;

2. Special or additional reports—as may be prescribed by the commission.

(e) Contents of report. The annual report shall be submitted on forms prescribed by the commission and shall disclose the information required on the forms and may include:

1. The rates that are subject to the original or appellate jurisdiction of the commission for any service, product, or commodity offered by the utility;

2. Rules and regulations relating to or affecting the rates, utility service, product or commodity furnished by the utility;

3. All ownership and management relationships among the utility and other entities, including individuals;

4. All transactions with affiliates, including, but not limited to, payments for costs of any services, interest expense, or for any property, right, or thing;

5. All payments of compensation (other than salary or wages subject to the withholding of federal income tax) for legislative matters in Texas or for representation before the Texas Legislature or any governmental agency or body; and

6. A verified or certified copy of the appropriate permit, issued by the conservation, reclamation, or subsidence districts, for each utility which withdraws groundwater from conservation, reclamation, or subsidence districts.

(f) Gross receipts assessment reporting. All utilities subject to the requirements of the Texas Water Code, §§13.451-13.453, shall file a gross receipts assessment report with the state comptroller reflecting those gross receipts subject to the assessment stipulated in the Code on a form prescribed by the state comptroller. These reports shall be required on an annual basis for those companies that have elected to remit their assessment annually and on a quarterly basis for those companies that have elected to remit their assessment quarterly. Such reports and assessments shall be remitted in accordance with the Texas Water Code, §§13.451-13.453.

(g) Information omitted from reports. The commission may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome on any utility to furnish the requested information. If any such information is omitted by permission of the commission, a written explanation of the omission must be stated in the report.

(h) Special and additional reports. Each utility, including municipally owned utilities, shall report on forms prescribed by the commission special and additional information as requested which relates to the operation of the business of the utility.

(i) Report amendments. Corrections of reports resulting from new information or errors shall be filed on a form prescribed by the commission.

(j) Penalty for refusal to file on time. In addition to penalties prescribed by law, the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

§291.72. Financial Records and Reports—Uniform System of Accounts. Every public utility shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts, as amended from time to time, shall be adhered to at all times, unless provided otherwise by these sections or by rules of a federal regulatory body having jurisdiction over the utility, or unless specifically permitted by the commission.

(1) Classification. For the purposes of accounting and reporting to the commission, each public water and/or sewer utility shall be classified with respect to its annual operating revenues as follows:

(A) Class A—annual operating revenues exceeding $750,000;

(B) Class B—annual operating revenues exceeding $150,000 but not more than $750,000;

(C) Class C—annual operating revenues not exceeding $150,000;

(2) System of accounts. For the purpose of accounting and reporting to the commission, each public water and/or sewer utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts:

(A) Class A—Commission-approved system of accounts as will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class A utilities;

(B) Class B—Commission-approved system of accounts as will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class B utilities;

(C) Class C—Commission-approved system of accounts as will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class C utilities.

(3) Accounting period. Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the utility.

§291.73. Water and Sewer Utilities Annual Reports. All water and sewer utilities shall submit an annual report to the commission on a form prescribed by the commission.

§291.74. Duplicate Information. A utility shall not be required to file with the commission forms or reports which duplicate information already on file with the commission.

§291.75. Maintenance and Location of Records. Unless otherwise permitted by the commission, all records required by these sections or necessary for the administration thereof shall be kept within the State of Texas at a central location or at the main business office located in the immediate area served. These records shall be available for examination by the commission or its authorized representative at all reasonable hours.

§291.76. Management Audits. The commission may inquire into the management
§291.81. Customer Relations.

(a) Information to customers.

(1) Upon request for service by an applicant or for transfer of service by a customer, the utility shall fully inform the customer of the cost of initiating or transferring service and, upon request shall furnish a copy of the rate schedule from its approved tariff. The utility shall clearly inform the applicant of which service initiation costs will be borne by the utility and which costs are the responsibility of the applicant. Where information about costs is estimated, the utility shall so inform the applicant.

(2) Each utility shall maintain a current set of maps showing the physical locations of its facilities. All facilities (production, transmission, distribution or collection lines, treatment plants, etc.) shall be labeled to indicate the size, design capacity, and any pertinent information which will accurately describe the utility’s facilities. These maps, and such other maps as may be required by the commission, shall be kept by the utility in a central location and will be available for commission inspection during normal working hours.

(b) Customer complaints.

(1) Upon complaint to the utility by a customer or applicant for service either in person, at its office, by letter, or by telephone, the utility shall promptly make a suitable investigation and advise the complainant of the results thereof.

(2) In the event the complainant is dissatisfied with the utility’s report, the utility must advise the complainant that he has recourse in the Texas Water Commission complaint process, and that such process can be initiated by contacting the Consumer Relations Coordinator, Water Utilities Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. The commission encourages all complaints to be made in writing to assist the commission in maintaining records on the quality of service of each utility.

(3) Each utility shall make an initial response within 15 days of receipt of a complaint from the commission on behalf of a customer or applicant for service. The commission may require a utility to provide a written response to the complainant, to the commission, or both. Pending resolution of a complaint, the commission may require continuation or restoration of service.

(4) The utility is required to keep a record of all complaints which shows the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof, for a period of two years subsequent to the final settlement of the complaint.

(c) Telephone number. The utility must maintain and post on the monthly billing a telephone number (or numbers) which may be reached by a local call by customers of each of the systems it operates. At the utility’s option, a toll-free telephone number or the equivalent may be provided.

§291.82. Resolution of Disputes. Any customer or applicant for service requesting the opportunity to discuss any action or determination of a utility under the customer service rules of the commission shall be given an opportunity for a review by the utility. If the utility is unable to provide a review immediately following the customer’s request, arrangements for the review shall be made for the earliest possible date. Service shall not be disconnected pending completion of the review. The commission may require continuation or restoration of service pending resolution of a complaint. If the customer chooses not to participate in such review or chooses not to make arrangements for such review to take place within five days after requesting it, the company may disconnect service.

§291.83. Refusal of Service.

(a) Compliance by applicant. An applicant for service must be in compliance with state and municipal regulations applicable to the type of service applied for and approved rules and regulations of the utility governing the service applied for which are on file with the commission. A utility may decline to serve an applicant which fails to be in compliance or for the following reasons:

(1) if the applicant’s installation or equipment is known to be inadequate or of such character that satisfactory service cannot be given;

(2) if the applicant is indebted to any utility for the same kind of service as that applied for. However, in the event the indebtedness of the applicant is in dispute, the applicant shall be served upon complying with the deposit requirements in §291.84 of this title (relating to Applicant and Customer Deposit); or

(3) for refusal to make a deposit if applicant is required to make a deposit under these sections.

(b) Applicant’s recourse. In the event that the utility shall refuse to serve an applicant under the provisions of these sections, the utility must inform the applicant in writing of the basis of its refusal and that the applicant may file a complaint with the commission thereon.

Subchapter E. Customer Service and Protection.

31 TAC §§291.81-291.89

The repealed sections are adopted on an emergency basis under House Bill 1808, 71st Legislature, 1989, amending the Texas Water Code, Chapter 19, and the Texas Water Code §§5.103, 5.105, and 13.041, which provides the commission with the rulemaking authority relating to the regulation and supervision of retail public utilities’ rates, fees, operations, and services.
Insufficient grounds for refusal to serve. The following shall not constitute sufficient cause for refusal of service to a present customer or applicant:

(1) delinquency in payment for service by a previous occupant of the premises to be served;

(2) failure to pay a bill to correct previous underbilling due to misapplication of rates more than six months prior to the date of application;

(3) violation of the utility's rules pertaining to operation of nonstandard equipment or unauthorized attachments which interferes with the service of others, unless the customer has first been notified and been afforded reasonable opportunity to comply with said rules;

(4) failure to pay a bill of another customer as guarantor thereof, unless the guarantee was made in writing to the utility as a condition precedent to service;

(5) failure to pay the bill of another customer at the same address except where the change of customer identity is made to avoid or evade payment of a utility bill;

(6) failure to pay for the restoration of a tap removed by the utility at its option or removed as the result of tampering or delinquency in payment by a previous customer.

§291.84. Applicant and Customer Deposit.

(a) Deposit policy. Deposits may only be charged if listed on the utility's approved tariff.

(1) Residential applicants. If a residential applicant does not establish credit to the satisfaction of the utility, the residential applicant can be required to pay a deposit that does not exceed $50 for water service and $50 for sewer service.

(2) Nonresidential applicants. If an applicant for nonresidential service does not establish credit to the satisfaction of the utility, the applicant may be required to make a deposit. The required deposit shall not exceed an amount equivalent to one-sixth of the estimated annual billings. If actual billings are less than the equivalent of the estimated billings, a new deposit requirement may be calculated and an additional deposit may be required to be made within 15 days after the issuance of written notice.

(b) Applicants 65 years of age or older. No cash deposit may be required of applicants for permanent residential service who are 65 years of age or older if such applicant does not have an outstanding account balance with the utility or another water or sewer utility which accrued within the last two years.

(c) Interests on deposits. Each utility shall pay a minimum interest on such deposits at an annual rate at least equal to a rate set each calendar year by the Public Utility Commission of Texas in accordance with the provision of Texas Civil Statutes, Article 1440a. Payment of the interest to the customer shall be annually if requested by the customer, or at the time the deposit is returned or credited to the customer's account. Inquiries about the current interest rate may be directed to the Water Utilities Division of the Texas Water Commission.

(d) Landlords/tenants. In cases of landlord/tenant relationships, the utility may require each party to sign an agreement specifying who is responsible for bills and deposits.

(e) Reestablishment of credit or deposit. Every applicant who has previously been a customer of the utility and whose service has been discontinued for nonpayment of bills, meter tampering, bypassing of meter or failure to comply with applicable state and municipal regulations or regulations of the utility shall be required, before service is resumed, to pay all amounts due the utility or execute a deferred payment agreement, if offered, and pay a deposit, if requested. The burden shall be on the utility to prove the amount of utility service received but not paid for and the reasonableness of any charges for such unpaid service, as well as all other elements of any bill required to be paid as a condition of service restoration.

(f) Records of deposits.

(1) The utility shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit;

(C) each transaction concerning the deposit; and

(D) the amount of interest earned on customer deposit funds.

(2) The utility shall issue a receipt of deposit to each applicant from whom a deposit is received and shall provide means whereby a depositor may establish a claim if the receipt is lost.

(3) A record of each unclaimed deposit must be maintained for at least four years, during which time the utility shall make a reasonable effort to return the deposit.

(g) Refund of deposit. If service is not connected, or after disconnection of service, the utility shall promptly and automatically refund the customer's deposit plus accrued interest or the balance, if any, in excess of the unpaid bills for service furnished. The utility may refund deposits plus accumulated interest prior to termination of utility service. The utility's policy for refunds to customers must be consistent and non-discriminatory. A transfer of service from one premise to another within the service area of the utility shall not be deemed a disconnection within the meaning of these sections, and no additional deposit may be demanded unless permitted by these sections.

§291.85. Requests for Service.

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

(1) Membership fee—A fee assessed each water supply or sewer service corporation service applicant which entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed pursuant to said bylaws. The fee should not exceed approximately 12 times the monthly base rate. The membership fee does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service.

(2) Tap fee—A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee may include the cost of physically tapping the main and installing meters, meter boxes, fittings and other materials, labor, setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings may be added. Other charges, such as extension fees or contributions in aid of construction (CIAC) are not to be included in a tap fee.

(b) Line extension and construction charges. Every utility shall file its extension policy with the commission as part of its tariff. The policy shall be consistent, non-discriminatory, and subject to the approval of the commission. No contribution in aid of construction may be required of any customer except as provided for in the extension policy.

(1) The fees for initiation of service or change of level of service charged by a water or sewer utility shall be in accordance with the following.

(A) The fee charged by a utility for connecting a customer's premises to the system (i.e., tap fee) shall be as stated on the approved tariff and shall be limited to the average of actual costs of materials, labor, and administrative costs for such service connections.
(B) The fee charged for all service connections (i.e., taps) requiring meters larger than 3/4 inch shall be set at the actual cost of making the individual service connection. The customer shall be given an itemized statement of the costs.

(C) An additional fee may be charged if stated on the approved tariff for a tap expense not normally incurred, such as a grinder pump or a road bore for customers outside of subdivisions or residential areas.

(2) Utilities shall not charge disconnect fees, membership fees, application fees, service call fees, or field collection fees. Other fees may be charged if approved by the commission or the executive director or his designated representative and included on the approved tariff.

(c) Contributions in aid of construction. Contributions in aid of construction that are required through an approved extension policy shall not be required of individual residential customers for production, storage, treatment, or transmission facilities, except that developers may be required to contribute contributions in aid of construction in amounts to furnish the development with facilities to provide for reasonable local demand requirements and which is also compliant with Texas Department of Health or Texas Water Commission minimum design criteria for facilities used in the production, transmission, pumping, or treatment of water, or Texas Water Commission minimum design criteria. For purposes of this subsection, a developer is one who subdivides or requests more than two meters on a piece of property.

(d) Cost utilities shall bear. Utilities shall be required to bear the cost of the first 200 feet of any water main or sewer collection line necessary to extend service to an individual residential customer. If the requirement is included in the utility's approved tariff, the customer may be charged the remaining costs of extending service to his property; provided, however, that the customers may be required to pay only the cost equivalent to the cost of connecting to the nearest transmission or distribution line, whether or not the line has adequate capacity to serve that customer. The utility shall bear the full cost of any over sizing of water mains or sewer collection lines necessary to serve other customers in the immediate area. The individual residential customer shall not be charged for any additional production, storage, or treatment facilities unless that customer places unique, nonstandard service demands upon the systems, in which case, the customer may be charged the full cost of extending service to and throughout his or her property, including the cost of all necessary transmission and storage facilities necessary to meet the service demands anticipated to be created by that property. For purposes of this section, commercial, industrial, and wholesale customers shall be treated as developers.

(e) Response to request for service.

(1) Every public utility shall serve each qualified applicant for service within its certificated area as soon as is practical after accepting a completed application. A qualified applicant is an applicant who has met all of the utility's requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service. A request for service that does not require line extensions, construction, or new facilities shall be filled within 14 working days after a completed application has been accepted. If construction is required to fill the order and if it cannot be completed within 30 days, the utility shall provide a written explanation of the construction required and an expected date of service. Except for good cause shown, the failure to provide service within 30 days of an expected date or within 180 days of the date a completed application was accepted from a qualified applicant shall constitute refusal to serve, and consideration may be given to assessing administrative penalties or revoking the certificate of convenience and necessity or to granting a certificate to another utility to serve the applicant. The time requirements set forth herein are not applicable in the event that the utility is prevented from extending service by legal impediment.

(2) The cost of extension and any construction cost options such as rebates to the customer, sharing of construction costs between the utility and the customer, or sharing of costs between the customer and other applicants shall be provided to the customer in writing upon assessment of the costs of necessary line work, but before construction begins.

(f) Applicants for service from a water supply or sewer service corporation. An applicant for service from a water supply or sewer service corporation may appeal to the commission a decision of the water supply or sewer service corporation affecting the amount to be paid to obtain service in addition to the regular membership or tap fees. If the applicant makes a deposit with the corporation covering the disputed and undisputed amounts, the corporation shall provide service to the applicant pending final disposition of the appeal. If the commission finds the amount charged to be unreasonable, it shall establish the fee to be paid. Any portion of a deposit found to be due the applicant shall be promptly repaid with interest thereon.

§291.86. Billing.

(a) Authorized rates. Bills shall be calculated according to the rates approved by the commission and listed on the utility's approved tariff.

(b) Due date. The due date of the bill for utility service shall not be less than 16 days after issuance. Payment for utility service is delinquent if the full payment, including late fees, is not received at the utility or at the utility's authorized payment agency by 5 P.M. on the due date. If the due date falls on a weekend or holiday, the due date for payment purposes shall be the next working day after the due date.

(c) Penalty on delinquent bills for retail service. A one-time penalty of $1.00 or 5.0% (whichever is larger) may be made on delinquent bills. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be collected unless a record of the date of mailing is made at the time of the mailing and maintained at the principal office of the utility.

(d) Deferred payment plan. A deferred payment plan is any arrangement or agreement between the utility and a customer in which an outstanding bill will be paid in installments that extend beyond the due date of the next bill. The utility shall offer, upon request, a deferred payment plan to any residential customer who has expressed an inability to pay all of his or her bill if the customer's bill exceeds the average monthly bill for that customer for the previous 12 months by three times and if that customer has not been issued more than two disconnection notices at any time during the preceding 12 months. In all other cases, the utility is encouraged to offer a deferred payment plan to residential customers who cannot pay an outstanding bill in full but are willing to pay the balance in reasonable installments. A deferred payment plan may include a finance charge which shall not exceed an annual rate of 10% simple interest and must be clearly stated on the deferred payment agreement.

(e) Rendering and form of bills.

(1) Bills for water and sewer service shall be rendered monthly unless otherwise authorized by the commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one week before the next billing cycle may be billed with the following month's bill. Bills shall be rendered as promptly as possible following the reading of meters. One bill shall be rendered for each meter.

(2) Information to be included on the bill. The customer's bill shall show all the following information, if applicable (and shall be arranged so as to allow the customer to readily compute his bill with a copy of the applicable rate schedule which shall be mailed on request to the customer):

(A) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;
(B) the number and kind of units metered;
(C) the applicable rate schedule title or code;
(D) the total amount due for water service and separately stated, the total amount due for sewer service;
(E) the due date of the bill;
(F) the date by which customers must pay the bill in order to avoid addition of a penalty;
(G) the total amount due as penalty for nonpayment within a designated period;
(H) a distinct marking to identify an estimated bill;
(I) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill;
(J) the gallonage used in determining sewer usage; and
(K) the local telephone number or toll free number where the utility can be reached.

(f) Charges for sewage service. It is not a requirement for the utility to use meters to measure the quantity of sewage disposed by individual customers. When a sewer utility is operated in conjunction with a water utility which serves the same customers, the charge for sewage disposal service may be based on the consumption of water as registered on the customer’s water meter. Where measurement of water consumption is not available, the utility shall use the best means available for determining the quantity of sewage disposal service used. A method of separating customers by class shall be adopted so as to apply rates which will accurately reflect the cost of service to each class of customer.

(g) Overbilling and underbilling. If billings for utility service are found to differ from the utility’s lawful rates for the services being purchased by the customer, or if the utility fails to bill the customer for such service, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment shall be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount which was underbilled. The backbilling shall not exceed six months unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §291.88 of this title (relating to Meters). If the underbilling is $25 or more, the utility shall offer to such customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of meter tampering, bypass, or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.

(h) Estimated bills. When there is good reason for doing so, a water or sewer utility may submit estimated bills, provided that an actual meter reading is taken every two months and appropriate adjustments made to the bills.

(i) Prorated charges. When a bill is issued for a period of less than one month, charges will be computed as follows. For metered service, service shall be billed for the amount measured and the minimum charge will be the applicable minimum as shown in the utility’s tariff prorated for the number of days service was provided. For flat-rate service, the charge shall be prorated on the basis of the proportionate part of the period during which service was rendered.

(j) Prorated charges due to utility service outages. In the event that utility service is interrupted or seriously impaired for more than 24 consecutive hours, the utility shall prorate the base charge to the customer to reflect this loss of service. The base charge to the customer shall be prorated on the basis of the proportionate part of the period during which service was interrupted.

(k) Disputed bills.

(1) A customer may advise a utility that a bill is in dispute by written notice or in person during normal business hours. A dispute must be registered with the utility prior to the date of proposed discontinuance for a customer to avoid discontinuance of service as provided by these sections.

(2) Notwithstanding any other section of this chapter, the customer shall not be required to pay the disputed portion of a bill which exceeds the amount of that customer’s average monthly usage at current rates pending the completion of the determination of the dispute. For purposes of this section only, the customer’s average monthly usage at current rates shall be the average of the customer’s gross utility service for the preceding 12-month period. Where no previous usage history exists, consumption for calculating the average monthly usage shall be estimated on the basis of usage levels of similar customers and under similar conditions.

(3) Notwithstanding any other section of this chapter, a utility customer’s service shall not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the completion of the determination of the dispute. The customer is obligated to pay any billings not disputed as established in §291.87 of this title (relating to Discontinuance of Service).

(l) Notification of alternative payment programs or payment assistance. Anytime a customer contacts a utility to discuss his or her inability to pay a bill or indicate that he or she is in need of assistance with his or her bill payment, the utility or utility representative shall inform the customer of all available alternative payment and payment assistance programs available from the utility, such as deferred payment plans, as applicable, and of the eligibility requirements and procedure for applying for each.

(m) Adjusted bills. There shall be a presumption of reasonableness of billing methodology by a water utility with regard to a case of meter tampering, bypassing, or other service diversion if any of the following methods of calculating such bills are used:

(1) estimated bills based upon service consumed by that customer at that location under similar conditions during periods preceding the initiation of meter tampering or service diversion. Such estimated bills shall be based on at least 12 consecutive months of comparable usage history of that customer, when available, or lesser history if the customer has not been served at that site for 12 months; this subsection, however, does not prohibit utilities from using other methods of calculating bills for unmetered water when the usage of other methods can be shown to be more appropriate in the case in question;

(2) estimated bills based upon that customer’s usage at that location after the service diversion has been corrected; or

(3) where the amount of actual unmetered consumption can be calculated by industry recognized testing procedures, bills may be calculated for the consumption over the entire period of meter bypassing or other service diversion.

(n) Equipment damage charges. A utility may charge for all labor, material, equipment, and other costs necessary to repair or replace all equipment damaged due to meter tampering or bypassing, service diversion, or the discharge of wastes which the system cannot properly treat. The utility may charge for all costs necessary to correct service diversion or unauthorized taps where there is no equipment damage, including incidents where service is reconnected without authority. An itemized bill of such charges must be provided to the customer. A utility may not charge any additional penalty or any other charge other than actual costs unless such penalty has been expressly approved by the commission and filed in the utility’s tariff.
§291.87. Discontinuance of Service.

(a) Disconnection for delinquent bills. A customer's utility service may be disconnected if a bill has not been paid or a deferred payment agreement entered into within 26 days from the date of issuance of a bill and if proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least 10 days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The information included in the notice shall be provided in English and Spanish as necessary to adequately inform the customer. Attached to or on the face of the termination notice shall appear a statement notifying the customer that if he or she is in need of assistance with payment of his or her bill, he or she may be eligible for alternative payment programs, such as deferred payment plans, and to contact the local office of the utility for more information. If mailed, the cut-off day may not fall on a holiday or weekend, but will be on the next working day after the 10th day. Payment at a utility's authorized payment agency is considered payment to the utility. The company shall not issue late notices or disconnect notices to the customer earlier than the first day the bill becomes delinquent, so that a reasonable length of time is allowed to ascertain receipt of payment by mail or at the utility's authorized payment agency.

(b) Disconnection with notice. Utility service may be disconnected after proper notice for any of the following reasons:

(1) failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement;

(2) violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation; and

(3) failure to comply with deposit or guarantee arrangements where required by §291.84 of this title (relating to Applicant and Customer Deposits).

(c) Disconnection without notice. Utility service may be disconnected without notice for the following reasons:

(1) where a known dangerous condition related to the type of service provided exists for as long as the condition exists;

(2) where service is connected without authority by a person who has not made application for service;

(3) where service has been reconnected without authority following termination of service for nonpayment; or

(4) in...ances of tampering with the utility company's meter or equipment, bypassing the same, or other instances of diversion as defined in §291.88 of this title (relating to Meters). Where reasonable, given the nature of the hazardous condition, a written statement providing notice of disconnection and the reason therefor shall be posted at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected.

(d) Disconnection prohibited. Utility service may not be disconnected for any of the following reasons:

(1) delinquency in payment for utility service by a previous occupant of the premises;

(2) failure to pay for merchandise, or charges for nonutility service provided by the utility;

(3) failure to pay for a different type or class of utility service unless fee for such service is included on the same bill;

(4) failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service;

(5) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §291.88 of this title (relating to Meters); and

(6) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter reading plan, unless the utility is unable to read the meter due to circumstances beyond its control.

(e) Disconnection on holidays or weekends. Unless a dangerous condition related to the type of service provided exists, or unless the customer requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when personnel of the utility are not available to the public for the purpose of making collections and reconnecting service.

(f) Disconnection due to utility abandonment. No public utility may abandon a customer or a certified service area without complying with the requirements of §291.114 (relating to Cessation of Operations by a Retail Public Utility) and approval by the commission.

(g) Disconnection for ill and disabled. No utility may disconnect service to a delinquent residential customer permanently residing in an individually metered dwelling unit when that customer establishes that discontinuance of service will result in some person residing at that residence becoming seriously ill or more seriously ill if service is discontinued. Each time a customer seeks to avoid termination of service under this section, the customer must have the attending physician (for purposes of this section, the term "physician" shall mean any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the utility within 16 days of issuance of the bill. A written statement must be received by the utility from the physician within 26 days of issuance of the utility bill. The prohibition against service termination provided by this section shall last 63 days from the issuance of the utility bill or such lesser period as may be agreed upon by the utility and the customer or physician. The customer who makes such request shall enter into a deferred payment plan.

(b) Reconnection of services. Reconnection of services must be established within 24 hours of the past due bill and any other outstanding charges being paid or upon correction of the circumstances which caused the disconnection.

§291.88. Meters.

(a) Meter requirements.

(1) Use of meter. All water sold by a utility shall be charged for by meter measurements, except where otherwise provided for by the utility's approved tariff.

(2) Installation by utility. Unless otherwise authorized by the commission, each utility shall provide and install and shall continue to own and maintain all meters necessary for the measurement of water to its customers.

(3) Standard type. No utility shall furnish, set up, or put in use any meter which is not reliable and of a standard type which meets industry standards; provided, however, special meters not necessarily conforming to such standard types may be used for investigation or experimental purposes.

(b) Meter readings.

(1) Meter unit indication. In general, each meter shall indicate clearly the gallons of water or other units of service for which charge is made to the customer.

(2) Reading of meters. Service meters shall be read at monthly intervals, and as nearly as possible on the corresponding day of each meter reading period, but may be read at other than monthly intervals if authorized in the utility's approved tariff.

(c) Meter tests on request of customer. Each utility shall, upon the request of a customer, and, if he so desires, in his presence or in that of his authorized representative, make without charge a test of the accuracy of the customer's meter. The test shall be made during the utility's normal working hours at a time convenient to the customer if he desires to observe the test.
The test shall be made preferably on the customer's premises, but may, at the utility's discretion, be made at the utility's test laboratory. If the meter has been tested by the utility, or by an authorized agency, at the customer's request, and within a period of two years the customer requests a new test, the utility shall make the test, but if the meter is found to be within the accuracy standards established by the American Water Works Association, the utility may charge the customer a fee which reflects the cost to test the meter, but this charge shall be no event be more than $25 for a residential customer. Following the completion of any requested test, the utility shall promptly advise the customer of the date of removal of the meter, the date of the test, the result of the test, and who made the test.

(d) Meters.

(1) Meter test facilities and equipment.

(A) The accuracy of a water meter shall be tested by comparing the actual amount of water passing through it with the amount indicated on the dial. The test shall be conducted in accordance with the standards for testing cold water meters as prescribed by the American Water Works Association.

(B) The utility shall provide the necessary standard facilities, instruments, and other equipment for testing its meters in compliance with these sections. Any utility may be exempted from this requirement by the commission provided that satisfactory arrangements are made for testing its meters by another utility or commission approved agency equipped to test meters in compliance with these sections.

(2) Meter test measurement standards.

(A) Measuring devices for test of meters may consist of a calibrated tank for volumetric measurement or tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be accompanied by a certificate of accuracy from any standard laboratory as may be approved by the commission. If a weight standard is used, the scales shall be tested and calibrated periodically by such approved laboratory and a record maintained of the results of the test.

(B) Standards used for meter testing shall be of a capacity sufficient to insure accurate determination of accuracy and shall be subject to the approval of the commission.

(C) A standard meter may be provided and used by a utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated periodically to insure its accuracy within the limits required by these sections. In any event, such tests shall be made at least once per year while the standard meter is in use, and a record of such tests shall be kept by the utility.

(3) Meter test prior to installation. No meter shall be placed in service unless its accuracy has been established. If any meter shall be removed from service, it must be properly tested and adjusted before being placed in service again. No meter shall be placed in service if its accuracy falls outside the limits as specified by the American Water Works Association.

(e) Bill adjustment due to meter error. If any meter is found to be outside of the accuracy standards established by the American Water Works Association, proper correction shall be made of previous readings for the period of six months immediately preceding the removal of such meter from service for the test, or from the time the meter was in service since last tested, but not exceeding six months, as the meter shall have been shown to be in error by such test, and adjusted bills shall be rendered. No refund is required from the utility except to the customer last served by the meter prior to the testing. If a meter is found not to register for any period, unless bypassed or tampered with, the utility shall make a charge for units used, but not metered, for a period not to exceed three months, based on amounts used under similar conditions during the period preceding or subsequent thereto, or during corresponding periods in previous years.

(f) Meter tampering. For purposes of these sections, meter tampering, bypass, or diversion shall be defined as tampering with a water or sewer utility company's meter or equipment causing damage or unnecessary expense to the utility, bypassing the same, or other instances of diversion, such as physically disorienting the meter, objects attached to the meter to divert service or to bypass, insertion of objects into the meter, and other electrical and mechanical means of tampering with, bypassing, or diverting utility service. The burden of proof of meter tampering, bypass, or diversion is on the utility. Photographic evidence must be accompanied by a sworn affidavit by the utility when any action regarding meter tampering as provided for in these sections is initiated. A court finding of meter tampering may be used instead of photographic or other evidence, if applicable.

§291.89. Continuity of Service

(a) Service interruptions.

(1) Every utility or water supply or sewer service corporation shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time.

(2) Each utility shall make reasonable provisions to meet emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.

(3) In the event of national emergency or local disaster, or resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

(b) Record of interruption. Except for momentary interruptions due to automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

(c) Report to commission. The commission shall be notified of interruptions in service affecting the entire system or any major division thereof lasting more than four hours. The utility shall notify the commission by telephone as soon as practical. Within seven days, the utility shall provide written notice to the commission of the interruption. The notice shall include the date, time, cause of interruption, duration, number of customers affected, steps being taken to prevent recurrence and credits applied to customers' bills as required by §291.86(i) of this title (relating to Billing) if applicable.

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Subchapter F. Quality of Service.

• 31 TAC §§291.91-291.95

The repealed sections are adopted on an emergency basis under House Bill 1808, 71st Legislature, 1989, amending the Texas Water Code, Chapter 13, and the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.
§291.91. Applicability.

§291.92. Requirements by Others.


§291.94. Sewer Utilities and Sewer Service Corporations.

§291.95. Standards of Construction.

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§291.91. Applicability. Except where otherwise noted, this chapter applies to utility service provided by both water and sewer utilities as defined by §291.3 of this title (relating to Definitions of Terms).

§291.92. Requirements by Others.

(a) The application of commission rules shall not relieve the utility or the water supply or sewer service corporation from abiding by the requirements of the laws and regulations of the state, local department of health, local ordinances, and all other regulatory agencies having jurisdiction over such matters.

(b) The commission’s rules relating to service and response to requests for service for utilities operating within a municipality’s corporate limits apply unless the municipality adopts its own rules.


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

1. Main—A water pipe owned, operated, and maintained by a system which is used for the purpose of transmission or distribution of water, but is not a water service pipe.

2. Service pipe—A pipe connecting the main and the customer’s place of consumption.

3. Water rationing—Reduction of the amount of water which may be consumed by customers of the system due to emergency conditions or drought.

(b) Sufficiency of service. Each utility and water supply corporation shall plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses.

1. The water system quantity and quality requirements of the Texas Department of Health or the Texas Water Commission shall be the minimum standards for determining the sufficiency of production, treatment, storage, transmission, and distribution facilities of water suppliers for household usage. Additional capacity shall be provided to meet the reasonable local demand characteristics of the service area, including reasonable quantities of water for outside usage and livestock.

2. In cases of extreme drought, periods of abnormally high usage, or extended reduction in ability to supply water due to equipment failure, it may be necessary to institute water rationing. Water rationing is not a legitimate alternative when water systems are deficient in meeting the “Minimum Water System Quantity Requirements” of the Texas Department of Health, requirements of the Texas Water Commission, or reasonable local demand characteristics during normal use periods, or when the system is not making all immediate and necessary efforts to repair or replace malfunctioning equipment.

(c) Quality of product. Each utility and water supply corporation shall furnish water which has been approved by the Texas Department of Health. Each utility or water supply corporation must promptly take all actions necessary to protect the health of its customers at all times.

(d) Service connections for utilities.

1. Ownership of service pipe.

(A) The utility shall furnish and install, for the purpose of connecting its distribution system to the customer’s property, the service pipe from its main to the meter location on the customer’s property. For all new installations, a utility-owned cut-off valve shall be provided on the utility side of the meter. Utilities without customer meters shall provide and maintain a cut-off valve on the customer’s property as near the property line as possible. This does not relieve the utility from the obligation to comply with §291.88 of this title (relating to Meters).

(B) The customer shall be responsible for furnishing and laying the necessary customer service pipe from the meter location to the place of consumption and shall keep the customer service line in good repair. For new taps, customers may be required to install a customer-owned cut-off valve on the customer’s side of the meter or connection. For utilities without customer meters, customer responsibility shall begin at the discharge side of the utility’s cut-off valve.

2. Location of service pipe. Prior approval of the utility shall be secured as to the proper location for connecting the customer’s service pipe to the utility’s facilities.

3. Location of meters.

(A) Meters shall be readily accessible for maintenance and reading, and so far as practicable, the location should be mutually acceptable to the customer and the utility. The meter shall be installed so as to be unaffected by climatic conditions and reasonably secure from damage.

(B) One meter is required for each residential, commercial, or industrial facility. An apartment building or a trailer or mobile home park may be considered to be a single commercial facility for the purpose of these sections.

§291.94. Ownership of Facilities and Adequacy of Sewer Service.

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

1. Customer service line—The pipe to convey sewage from the customer’s premises to the property boundary connecting to the system’s service pipe.

2. Main—A sewage pipe owned, operated, or maintained by a sewer system used to transport sewage, and which is not a service pipe.

3. Service pipe—A pipe from the customer’s property boundary to the system’s main, and which receives sewage from the customer’s service line.

4. Sewage—Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

(b) Sufficiency of service. The system’s facilities for the collection, treatment, and disposal of sewage must be adequately sized to meet all normal demands for service and provide a reasonable reserve for emergencies.
(c) Sufficiency of treatment. Each system shall maintain and operate a treatment facility of adequate size and properly equipped to treat sewage and discharge the effluent at the quality required by the laws and regulations of the State of Texas.

(d) Service connections for utilities.

(1) The utility shall furnish and install, for the purpose of connecting its collection system to the customer's service line, the service pipe from its main to the customer's property line.

(2) The customer shall be responsible for furnishing and laying the necessary customer service line from the property line to the residence and shall keep the customer service line in good repair.

(e) Service pipe maintenance.

(1) Utility maintenance. The utility shall maintain its collection system and appurtenances to minimize blockages.

(2) Customer maintenance. The customer service line and appurtenances shall be constructed in accordance with the laws and regulations of the State of Texas, local plumbing codes, or, in the absence of such local codes, the National Plumbing Code, or other standards as prescribed by the commission.

(3) Customer responsibility. It shall be the customer's responsibility to maintain the customer service line and appurtenances in good operating condition. If the utility can provide evidence of excessive infiltration or inflow into the customer's service line or failure to provide proper pretreatment, the utility may, with the written approval of the executive director, require that the customer repair the line or eliminate the infiltration or inflow or take such actions necessary to correct the problem. If the customer fails to correct the problem within a reasonable time, the utility may disconnect the service after proper notice.

§291.95. Standards of Construction. In determining standard practice, the commission will be guided by the provisions of the American Water Works Association, and such other codes and standards that are generally accepted by the industry, except as modified by this commission, the Texas Department of Health, or municipal regulations within their jurisdiction. Each system shall construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other retail public utilities insofar as practical.

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Subchapter G. Certificates of Convenience and Necessity.

• 31 TAC §§291.101-291.117

The repealed sections are adopted on an emergency basis under House Bill 1808, 71st Legislature, 1989, amending the Texas Water Code, Chapter 13, and the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

§291.101. Definition of Terms.

§291.102. Certificate Required.

§291.103. Exception for Extension of Service.

§291.104. Applicant.

§291.105. Certificates or Amendments for New Service Areas and Facilities.


§291.107. Notice for Applications for Certificates of Convenience and Necessity.

§291.108. Action on Applications.

§291.109. Corrections to Certificates of Convenience and Necessity.

§291.110. Report of Sale, Merger or Consolidation.

§291.111. Transfer of Certificate of Convenience and Necessity.

§291.112. Revocation or Amendment of Certificate.

§291.113. Requirement to Provide Continuous and Adequate Service.


§291.115. Exclusiveness of Certificates.


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• 31 TAC §§291.102-291.118

The new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

§291.102. Certificate Required.

(a) Unless otherwise specified, a public utility or water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the commission a certificate that the present or future public convenience and necessity requires or will require that installation, operation, or extension. Except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

(b) A person that is not a retail public utility may not construct facilities to provide water or sewer service to more than one service connection not on the property owned by the person and that are within the certified service area of a retail public utility without first obtaining written consent from the retail public utility.

(c) Not later than September 1, 1990, a utility or water supply or sewer service corporation that has been previously exempted from the certificate requirements because of operations, extensions, or service in progress on September 1, 1975, shall submit to the commission a completed application to obtain a certificate of public convenience and necessity for the service being provided on September 1, 1975. The commission shall grant a certificate of public convenience and necessity to the customer locations currently being served by the utility or water supply or sewer service corporation that were also being served on September 1, 1975.
§291.103. Exceptions for Extension of Service.

(a) A retail public utility is not required to secure a certificate of public convenience and necessity for:

(1) an extension into territory contiguous to that already served by it, if the point of ultimate use is within 1/4 mile of the boundary of the certificated area, and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility.

(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity.

(b) Whenever an extension is made pursuant to subsection (a) of this section, the utility or water supply or sewer service corporation making the extension must inform the commission of the extension by submitting with 14 days of the date service is commenced, a detailed map of the certificate area clearly showing the extension, accompanied by a detailed written explanation of the extension and work done to accomplish it.

§291.104. Applicant. It is the responsibility of the owner of the utility or the designated representative of the water supply or sewer service corporation to submit an application for a certificate of convenience and necessity.

§291.105. Certificates or Amendments for New Service Areas and Facilities. The commission may grant applications and issue or amend certificates only after finding that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege.

(1) A certificate, or certificate amendment, is required for a change in service area, and as a requisite to certification, the commission shall consider the adequacy of service currently provided to the requested area, the need for additional service in the requested area, the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area, the ability of the applicant to provide adequate service, environmental integrity, and the probable improvement in service or lowering of cost to consumers in that area.

(2) A certificate is not required for the following:

(A) a contiguous extension of those facilities described in the Texas Water Code, §13.243; or

(B) the construction or upgrading of distribution facilities within the retail public utility's service area.

(3) The terms "construction" and/or "extension", as used in this section, shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a retail public utility to the grant of a certificate of convenience and necessity without showing that the proposed extension is necessary for the service, accommodation, convenience, or safety of the public.

§291.106. Contents of Certificate of Convenience and Necessity Applications. Applications for certificates of convenience and necessity or for an amendment to a certificate shall contain an original and three copies of the following materials:

(1) the appropriate application form prescribed by the commission, completed as instructed and properly executed;

(2) a state highway county map, or equivalent, with a scale of one inch = two miles, which clearly defines the proposed location of the applicant and each neighboring retail public water or sewer utility within two miles of the applicant's present location. Service boundaries shall conform to definable landmarks such as roads, creeks, and railroads. Separate maps shall be filed for each county in which the retail public utility operates;

(3) a facilities map with a scale of one inch = 2,000 feet, United States Geological Survey 7-minute series maps, subdivision plans, engineering planning maps, or other maps of equivalent scale and accuracy. The map shall separately indicate the production facilities, transmission facilities, and distribution facilities as located within the area proposed.

(A) a color code may be used to distinguish the types of facilities indicated.

(B) The location of any such facility shall be described with such exactness that the facility can be located on the ground from the map or in supplementary data with reference to physical landmarks where necessary to show actual location.

(4) an original and three copies of any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit, or license from the proper municipality, the Texas Department of Health, or other public authority;

(5) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;

(6) a schedule for the ultimate construction of all proposed facilities, keyed to maps showing where such facilities will be located to provide service;

(7) source of funding for facilities;

(8) for utilities or water supply or sewer service corporation previously exempted for operations or extensions in progress as of September 1, 1975, a list of all current customer locations which were being served on September 1, 1975, and an accurate location of them on the maps submitted. Current customer locations which were not being served on that date should also be located on the same map in a way which clearly distinguishes the two groups;

(9) any other information that the executive director may reasonably require.

§291.107. Notice for Applications for Certificates of Convenience and Necessity.

(a) If an application for issuance or amendment of a certificate of public convenience and necessity is filed, the applicant will prepare a notice or notices, as prescribed in the commission's application form, which will include the following:

(1) all information outlined in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6525-13a, §13;

(2) all information stipulated in the commission's instructions for xmitting an application for a certificate of convenience and necessity and

(3) a statement that persons who wish to intervene or comment upon the action sought should contact the Rates Section, Water Utilities Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, within 30 days of mailing or publication of notice, whichever occurs later.

(b) After reviewing and, if necessary, modifying the proposed notice, the commission will send the notice to the applicant for publication and/or mailing.

(1) The applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the requested service area, and any city with an extra-territorial jurisdiction which overlaps the proposed service area.

(2) Applicants previously exempted for operations or extensions in progress as of September 1, 1975, must provide individual mailed notice to all current customers. The notice must contain the information required in the application.
(3) Within 30 days of the date of the notice, the applicant shall submit to the commission an affidavit specifying the persons to whom notice was provided and the date of that notice.

(c) The applicant shall publish the notice in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the notice is received from the commission. Proof of publication in the form of a publisher’s affidavit shall be submitted to the commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

(d) The commission may require the applicant to deliver notice to other affected persons or agencies.

§291.108. Action on Applications.

(a) The commission may conduct a public hearing on any application.

(b) The commission may take action on an application at a regular meeting without holding a public hearing if, 30 days after the required mailed or published notice has been issued (whichever occurs later), no hearing has been requested.

(c) If a hearing is requested, the commission shall fix a time and place for the hearing. Notice of the hearing shall be issued at least 10 days in advance of the hearing. Mailed notice shall be provided to all parties and any person requesting a hearing.

§291.109. Corrections to Certificates of Convenience and Necessity. The commission or executive director or his designated representative may make corrections to certificates, either by reissuing the certificate or by issuing an endorsement to the certificate, without the necessity of observing the formal application procedures prescribed in this chapter:

(1) to correct a clerical or typographical error;
(2) to describe more accurately the location of the certified area; or
(3) to state more accurately or update any provision in a certificate without changing the substance of any such provision, including the updating or redrawing of maps which have been incorporated by reference in a certificate.

§291.110. Report of Sale, Merger, or Consolidation.

(a) At least 60 days before the proposed effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation and the proposed transferee shall notify the commission of the proposed transaction. The notification shall be on the form required by the commission and must be complete to satisfy the 60-day requirement.

(b) The commission shall, with or without public hearing investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest.

(c) Prior to the expiration of the 60-day notification period, the commission shall notify all known parties to the transaction of any facts or conditions which would have an adverse effect on a request to sell, assign, or lease a certificate of convenience and necessity or any right obtained under the certificate.

(1) The commission shall also notify all known parties if no adverse facts or conditions are discovered.

(2) A notification under this subsection does not prohibit the executive director from making an adverse recommendation or the commission from making an adverse decision in a subsequent proceeding under the Texas Water Code, §13.251.

(d) If the proposed transaction is reported less than 60 days in advance of the effective date, the commission may notify the parties of the results of its investigation with the final recommendation for decision.

(e) A utility which has sold, acquired, leased, or rented any plant as an operating unit in this state for a total consideration in excess of $100,000, or merged or consolidated with another utility operating in this state prior to September 1, 1987, shall report the transaction to the commission within 30 days of the effective date of the transaction, or within such other reasonable time as the commission may allow. The report shall be made in a form prescribed by the commission. The Texas Water Code, §13.301(c), does not apply to reports filed under this subsection.

(f) Within 30 days after the actual effective date of the transaction reported under subsection (a) of this section, a utility must file an application to transfer the certificate of convenience and necessity on a form required by the commission.

(g) A utility which does not change its operating structure but for which controlling interest is transferred through stock transactions or a person which acquires controlling interest in a utility shall report the transaction to the commission within 60 days after the effective date. This report may be in the form of a letter and should include the new address, telephone number, and name of the person acquiring controlling interest or contact person for the corporation.

(h) If a public utility facility or system is sold and the facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the public utility may not sell or transfer any of its assets, its certificate of convenience and necessity, or controlling interest in an incorporated utility, unless the utility provides to the purchaser or transferee before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

§291.111. Transfer of Certificate of Convenience and Necessity.

(a) Effective date of transfer. A certificate is issued in personam, continues in force until further order of the commission, and may be transferred only by the approval of the commission. Any attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Notice for transfer of a certificate of convenience and necessity.

(1) Mailed notice shall be given to customers of the transferee and transferor utilities and other affected parties and shall include the following:

(A) the name and business address of the transferor retail public utility and the transferee retail public utility;

(B) a description of the service area of the retail public utility being transferred;

(C) the anticipated effect of the transfer on the operation or the rates and services provided to customers being transferred; and

(D) a statement that persons who wish to intervene or comment upon the action sought should contact the Rates Section, Water Utilities Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, within 30 days of mailing or publication of notice, whichever occurs later.

(2) The commission may require the applicant to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the area in which the retail public utility being transferred is located and publication may be allowed in lieu of individual notice as required in this subsection.
(3) If no hearing is requested, the commission may approve the transfer by order at a regular meeting of the commission.

(4) If a hearing is requested, the commission shall fix a time and place for the hearing and notice thereof shall be issued. Mailed notice shall be issued to all parties and any person requesting a hearing.

(5) The commission may approve a transfer if it determines that the transferee is capable of rendering adequate and continuous service to every consumer within the certified area, after considering the factors set forth in the Texas Water Code, §13.246(c). The commission may refuse to approve a transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been substantially met. The commission shall also consider the prior compliance record of the transferee, if any.

(c) Reporting of customer deposits. Upon the sale or transfer of any public utility or operating units thereof, the seller shall file with the commission, under oath, in addition to other information, a list showing the names and addresses of all customers served by such utility or unit who have to their credit a deposit, the date such deposit was made, the amount thereof, and the unpaid interest thereon. All such deposits shall be refunded to the customers or transferred to the new owner, with all accrued interest.

§291.112. Revocation or Amendment of Certificate.

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity if it finds that the certificate holder has never provided, is no longer providing service, or has failed to provide continuous and adequate service in the area, or part of the area covered by the certificate.

(b) If the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

§291.113. Requirement to Provide Continuous and Adequate Service. Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity must provide continuous and adequate service and may not discontinue, reduce, or impair utility service except for:

1. nonpayment of charges;
2. nonuse; or
3. other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.


(a) Any retail public utility which possesses or is required to possess a certificate of convenience and necessity desiring to discontinue, reduce, or impair utility service, except under the conditions listed in the Texas Water Code, §13.250(b), must file a petition with the commission which sets out:

1. the action proposed by the retail public utility;
2. the proposed effective date of the actions;
3. a concise statement of the reasons for proposing the action; and
4. the area affected by the action, including maps as described by §291.106(2) and (3) of this title (relating to Contents of Certificate of Convenience and Necessity Applications).

(b) The retail public utility shall submit a proposed notice to be provided to customers of the utility and other affected parties which will include the following:

1. the name and business address of the retail public utility which seeks to cease operations;
2. a description of the service area of the retail public utility involved;
3. the anticipated effect of the cessation of operations on the rates and services provided to the customers; and
4. a statement that persons who wish to intervene or comment upon the action sought should contact the Rates Section, Water Utilities Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, within 30 days of mailing or publication of notice, whichever occurs later.

(c) After review by the commission, the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the petitioner’s service area and any city whose extraterritorial jurisdiction (ETJ) overlaps the applicant’s service area, and to the customers of the applicant proposing to cease operations.

(d) The applicant shall publish notice once each week for two consecutive weeks in a newspaper of general circulation in the county of operation which shall include, in addition to the information specified in subsection (b) of this section:

1. the sale price of the facilities;
2. the name and mailing address of the owner of the retail public utility; and
3. the business telephone of the retail public utility.

(e) The commission may require the applicant to deliver notice to other affected persons or agencies.

(f) If, 30 days after the required mailed or published notice has been issued (whichever occurs later), no hearing is requested, the commission may consider the application for final decision without further hearing.

(g) If a hearing is requested, the commission shall fix a time and place for the hearing and notice thereof shall be issued at least 10 days in advance of the hearing. Mailed notice shall be issued to any person requesting a hearing.

§291.115. Exclusiveness of Certificates. Any certificate granted under this subchapter shall not be construed to vest exclusive service or property rights in and to the area certified. The commission may grant, upon finding that the public convenience and necessity requires additional certification to another retail public utility or utilities, additional certification to any other retail public utility or utilities to all or any part of the area previously certified pursuant to this chapter.

§291.116. Contracts Valid and Enforceable. Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after notice and hearing, are valid and enforceable and are incorporated into the certificates of public convenience and necessity.

§291.117. Contents of Request for Commission Order Under the Texas Water Code, §13.232. If a retail public utility in constructing or extending a line, plant or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the commission may issue an order prohibiting the construction, extension, or provision of service, or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of service. A request for commission order shall include the following:

1. the name and business address of the retail public utility making the request;
2. the name and business address of the retail public utility which is to be the subject of the order;
§291.118. Filing of Maps. On request by the commission, each utility and water supply or sewer service corporation shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas.

Issued in Austin, Texas, on December 20, 1989
TRD-891260
Jim Haley
Director, Legal Division
Texas Water Commission
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Expiration date: April 19, 1990
For further information, please call: (512) 463-8069

Subchapter H. Utility Submetering.

§31 TAC §§291.121-291.126

The repealed sections are adopted on an emergency basis under House Bill 1808, 71st Legislature, 1989, amending the Texas Water Code, Chapter 13, and the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the rulemaking authority relating to the regulation and supervision of retail public utilities’ rates, fees, operations, and services.

§291.121. General Rules.

§291.122. Definitions.

§291.123. Records and Reports.


§291.125. Discontinuance of Service.

§291.126. Submeters.

Issued in Austin, Texas, on December 20, 1989.
Utility service—For purposes of this subchapter, utility service shall include water and wastewater service only.

Utility submetering—Individual dwelling unit metering of water or wastewater utility service performed by the owner.

§291.123. Records and Reports.

(a) Either the owner or the owner’s management company engaging or proposing to engage in utility submetering or billing for nonsubmetered master metered service must register with the commission on or before March 1, 1988, or 30 days prior to commencing utility submetering, whichever occurs first, and provide the following information:

(1) business address and business telephone of the owner or owner’s management company;

(2) date billing began or is to begin;

(3) person to be contacted with regard to questions or complaints about service; and

(4) name and location of each apartment unit or mobile home park being submetered or nonsubmetered apartment unit.

(b) The owner shall maintain and make available for inspection by the tenant the following records during normal business hours:

(1) the billing from the utility to the owner for the current month and the 12 preceding months;

(2) the calculation of the average cost per billing unit, i.e., gallons for the current month and the 12 preceding months; for nonsubmetered master metered service the average cost per billing unit shall be equal to the charges for the service utility plus applicable tax, less any penalties charged by the utility plus applicable tax, less any penalties charged by the utility to the owner for disconnect, reconnect, late payment, or other similar service charges, divided by the total number of billing units;

(3) all submeter readings and tenant billings for the current month and the 12 preceding months; and

(4) all submeter test results for the current month and the 12 preceding months; and

(5) separate accounts for rental and utility billing, including date of transaction.

(c) Records shall be made available at the resident manager’s office during reasonable business hours or, if there is no resident manager, at the dwelling unit of the tenant at a time agreed upon by the owner and tenant.

(d) All records shall be made available to the commission upon request.

§291.124. Calculation of Costs.

(a) Nonsubmetered master metered utility service costs shall be calculated based on metered billing units during the same billing period as that of the utility. The nonsubmetered master metered billing units shall be multiplied by the average cost per billing calculated according to §291.125(d) of this title (relating to Rendering and form of nonsubmetered master metered bill).

(b) The cost of nonsubmetered master metered utilities shall be the total charges for utility service to the apartment house less any penalties charged by the utility to the apartment owner for disconnect, reconnect, late payment, or other similar service charges.


(a) Rental agreement for submetering. All rental agreements between the owner and the tenants shall clearly state that the dwelling unit is submetered, that the bills will be issued on that basis, that water consumption by the tenant is to be accounted for by the meter, and that any disputes relating to the computation of the tenant’s bill and the accuracy of the submetering device will be between the tenant and the owner. Each owner shall provide a tenant, at the time the lease is signed, a copy of this section or a narrative summary approved by the executive director or his designated representative to inform the tenant of his rights and the owner’s responsibilities under this section.

(b) Rental agreement for nonsubmetered master metered utility service. All rental agreements between the apartment owner and the tenants shall provide a clear written description of the method of the allocation of nonsubmetered master metered utilities for the apartment house. The method of allocation may be changed only after 90 days notice of such change to the tenants. The rental agreement for each apartment unit shall contain a statement of the average monthly bill for the previous calendar year for that apartment unit. Each owner shall provide a tenant, at the time a lease is signed, a copy of this section or a narrative summary approved by the executive director or his designated representative to inform the tenant of his rights and the owner’s responsibilities under this section.

(c) Rendering and form of submetered bill.

(1) Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for less than that period. Bills shall be rendered as promptly as possible following the reading of the submeters. The submeters shall be read within three days of the schedule reading date of the utility’s master meter.

(2) The billing unit shall be that used by the utility in its billing to the owner such as gallon for water or wastewater submetering.

(3) The owner shall be responsible for determining that water consumption or sewer usage billed to any dwelling unit shall be only for that submetered and consumed within that unit.

(4) Submetered billings shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, submetered billing information must be separate and distinct from any other charges on the bill and conform to information required in paragraph (8) of this subsection. The submetered bill must clearly state "submetered water" or "submetered wastewater" as applicable.

(5) The bill shall reflect only submetered usage. Utility consumption for all common facilities will be the responsibility of the owner and not of the tenant. Allocation of central systems for air conditioning, heating, and hot water are not prohibited by these sections as set forth in Subchapter I of this chapter (relating to Non-Submetered Master Meter Utilities).

(6) The owner shall not impose any extra charges on the tenant over and above those charges which are billed by the utility to the owner. The bill may not include a deposit, late penalty, reconnect charge, or any other charges unless otherwise provided for by these sections.

(A) A one-time penalty not to exceed 5.0% may be made on delinquent accounts. If such penalty is applied, the bill shall indicate the amount due if paid by the due date and the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease which states the exact dollar or percentage amount of such late penalty.

(B) A reconnect fee may be applied if service to the tenant is disconnected for nonpayment of submetered bills in accordance with §291.125(a) of this title (relating to Discontinuance of Service). Such reconnect fee shall be calculated based on the average actual cost to the owner for the expenses associated with the reconnection, but under no circumstance shall exceed $10. No reconnect charge may be applied unless agreed to by the tenant in a written lease which states the exact dollar amount of such reconnect charge.

(7) The tenant’s submeter bills shall be calculated in the following manner. After the water or wastewater bill is received from the utility, the owner shall di-
vic the net total charges for water or sewer consumption, plus applicable tax, by the total number of billing units to obtain an average cost per billing unit. This average billing unit cost shall then be multiplied by each tenant’s consumption to obtain the charge to the tenant. The average cost per billing unit shall not include any penalties charged by the utility to the owner for disconnect, reconnect, late payment, or other similar service charges.

(8) The tenant’s water or wastewater submeter bill shall show all of the following information:

(A) the date and reading of the submeter at the beginning and at the end of the period for which the bill is rendered;

(B) the number of billing units metered;

(C) the computed rate per billing unit;

(D) the total amount due for water or wastewater used;

(E) a clear and unambiguous statement that the bill is not from the utility, which shall be named in the statement;

(F) the name and address of the tenant to whom the bill is applicable;

(G) the name of the firm rendering the submetering bill and the name or title, address, and telephone number of the person or persons to be contacted in case of a billing dispute;

(H) the date by which the tenant must pay the bill; and

(I) the name, address, and telephone number of the party to whom payment is to be made.

(d) Rendering and form of nonsubmetered master metered bill.

(1) Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for less than that period.

(2) The allocation of nonsubmetered master metered utilities costs to tenants shall be based on one or a combination of the following methods:

(A) the total square footage living area of the dwelling unit as a percentage of the total square footage living area of all dwelling units of the apartment house and all heated and/or air conditioned common areas. This percentage shall be stated in the rental agreement for each dwelling unit; or
((B) the individually metered or submetered utility usage of the dwelling unit as a percentage of the sum of the individually metered or submetered usage of all dwelling units.

(3) Methods to allocate nonsubmetered master metered utilities to tenants, other than the method outlined in this section, must be approved by the commission.

(4) Billings to the tenant shall not be included as part of the rental payment, or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, utility billing information must be separate and distinct from any other charges on the bill. The bill may not include a deposit, late penalty, reconnect charge, or any other charges unless otherwise provided for by these sections.

(A) A one time penalty not to exceed 5.0% may be made on delinquent accounts. If such penalty is applied, the bill shall indicate the amount due if paid by the due date and the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease which states the exact dollar or percentage amount of such late penalty.

(B) A reconnect fee may be applied if service to the tenant is disconnected for nonpayment of submetered bills in accordance with §291.125(a) of this title (relating to Discontinuance of Service). Such reconnect fee shall be calculated based on the average actual cost to the owner for the expenses associated with the reconnection, but under no circumstance shall exceed $10. No reconnect charge may be applied unless agreed to by the tenant in a written lease which states the exact dollar amount of such reconnect charge.

(5) An apartment house owner may not impose additional charges on a tenant in excess of the actual charges imposed on the owner for utility consumption by the apartment house.

(d) Due date. The due date of the bill shall not be less than seven days after issuance. A bill for service is delinquent if not received by the party indicated on the bill by the due date. The postmark date, if any, on the envelope of the bill or on the bill itself shall constitute proof of the date of issuance. An issuance date on the bill shall constitute proof of the date of issuance if there is no postmark on the envelope or bill. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.

(e) Disputed bills. In the event of a dispute between the tenant and the owner regarding any bill, the owner shall forthwith make such investigation as shall be required by the particular case, and report the results thereof to the tenant. The investigation and report shall be completed within 30 days from the date the tenant notified the owner of the dispute.

(f) Tenant access to submetering records. The tenants of any dwelling unit whose water consumption or wastewater based on water consumption is submetered shall be allowed by the owner to review and copy the master billing for the current month’s billing period and for the 12 preceding months, and all submeter readings of the entire apartment house or mobile home park for the current month and for the 12 preceding months.

(g) Estimated submetering bills. Estimated bills shall not be rendered unless the meter has been tampered with or is out of order, and in such case the bill shall be distinctly marked as such.

(h) Overbilling and underbilling. If billings are found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment shall be made for the entire period of overcharges. If the tenant was undercharged, the owner may backbill the tenant for the amount which was underbilled for a period not to exceed six months. If the underbilling is $25 or more, the owner shall offer to such tenant a deferred payment plan option, for the same length of time as that of the underbilling. Adjustments for usage by a previous tenant may not be backbilled to the current tenant.

(i) Payments. Unless clearly designated by the tenant, payments shall be applied first to rent and then to utilities.

§291.126. Discontinuance of Service.

(a) Disconnection for delinquent bills. Utility service may only be disconnected for nonpayment of utility bills. A tenant’s utility service may be disconnected if a bill has not been paid within 12 days from the date of issuance and proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least five days prior to a stated date of discontinuation, with the words “termination notice” or similar language prominently displayed on the notice. The notice shall include the office or street address where a tenant can go during normal working hours to make arrangements for payment of the bill and for reconnection of service.

(b) Disconnection on holidays and weekends. Unless a dangerous condition exists which is related to the service provided, or unless the tenant requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when personnel of the apartment house or mobile home park are not available for the purpose of making collections and reconnecting service.
§291.127. Submeters.

(a) Submeter requirements.
(1) Use of submeter. All water sold by an owner shall be charged for by meter measurements.

(2) Installation by owner. Unless otherwise authorized by the commission, each owner shall be responsible for providing, installing, and maintaining all submeters necessary for the measurement of water or wastewater to its tenants.

(b) Submeter records. Each owner shall keep the following records.

(1) Submeter equipment record. Each owner shall keep a record of all of its submeters, showing the tenant's address and date of the last test.

(2) Records of submeter tests. All submeter tests shall be properly referenced in the submeter record required by this section. The record of each test made shall show the identifying number of the submeter, the standard meter and other measuring devices used, the date and kind of test made, by whom made, the error (or percentage of accuracy), and sufficient data to permit verification of all calculations.

(c) Submeter readings. In general, each meter shall indicate clearly the gallons for which charge is made to the tenant.

(d) Submeter tests on request of tenant. Each owner shall, upon the request of a tenant, and if the tenant so desires, in the tenant's presence or in that of the tenant's authorized representative, make a test of the accuracy of the tenant's submeter. The test shall be made during reasonable business hours at a time convenient to the tenant desiring to observe the test. If the submeter tests within the accuracy standards set by the American Water Works Association (AWWA) for water or wastewater meters, a charge of up to $25 may be charged the tenant for making the test. However, if the submeter has not been tested within a period of one year, or if the submeter's accuracy is not within the appropriate accuracy standards, no charge shall be made to the tenant for making the test. Following completion of any requested test, the owner shall promptly advise the tenant of the results of the test.

(e) Bill adjustment due to submeter error. If any submeter is found not to be within the accuracy standards in subsection (d) of this section, proper correction shall be made of previous readings. An adjusted bill shall be rendered in accordance with §291.124(g) of this title (related to Billing). If a submeter is found not to register for any period, unless bypassed or tampered with, the owner may make a charge for units used, but not metered, for a period not to exceed one month based on amounts used under similar conditions during periods preceding or subsequent thereto, or during the corresponding period in previous years.

(f) Bill adjustment due to conversion. If, during the 90-day period preceding the installation of meters or submeters, an owner increases rental rates, and such increase is attributable to increased costs of utilities, then such owner shall immediately reduce the rental rate by the amount of such increase and shall refund all of such increase that has previously been collected within said 90-day period.

(g) Location of submeters. Submeters or cut-off valves in conjunction with the submeters shall be installed in accordance with the standards set by the AWWA, and will be readily accessible for reading, testing, and inspection, where such activities will cause minimum inconvenience and inconvenience to the tenant.

(h) Submeter testing facilities and equipment.

(1) Reference standards. Each owner shall provide or have access to suitable indicating instruments as reference standards for insuring the accuracy of shop and portable instruments used for testing billing submeters.

(2) Testing of reference standards. Reference standards of all kinds shall be submitted once each year or on a scheduled basis approved by the commission to a standardizing laboratory of recognized standing, for the purpose of testing and adjustment.

(3) Calibration of test equipment. All shop and portable instruments used for testing billing submeters shall be calibrated by comparing them with a reference standard at least once each year during the time such test instruments are being regularly used. Test equipment shall at all times be accompanied by a certified calibration card signed by the proper authority, giving the date when it was last certified and adjusted. Records of certifications and calibrations shall be kept on file in the office of the owner.

(i) Accuracy requirements for submeters. Submeters shall be adjusted as close as possible to the condition of zero error. The tolerances are specified only to allow for necessary variations.

(j) Submeter tests prior to installation. No submeter shall be placed in service unless its accuracy has been established. If any submeter is removed from actual service and replaced by another submeter for any purpose whatsoever, it shall be properly tested and adjusted before being placed in service again.

(k) Restriction. Unless otherwise provided by the commission, no dwelling unit may be submetered unless all dwelling units are submetered.

(l) Same type meters required. All submeters which are served by the same master meter shall be of the same type.

Issued in Austin, Texas, on December 20, 1989.

TRD-8912281 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: December 20, 1989
Expiration date: April 19, 1990.
For further information, please call: (512) 483-8069

TITIE 34. PUBLIC FINANCE
Part I. Comptroller of Public Accounts
Chapter 3. Tax Administration
Subchapter L. Motor Fuels Tax

• 34 TAC §3.198

The Comptroller of Public Accounts adopts on an emergency basis new § 3.198, concerning pump labelling inspection fees. The new emergency section imposes a fee on persons holding permits as distributors of gasoline, as authorized by recent legislation.

House Bill 504, adopted in the recent legislative session, requires the comptroller to administer and enforce a program of labelling pumps through which fuel containing ethanol or methanol is sold. The legislation also authorizes the imposition of fees to provide funds for administering and enforcing this program. The new section is adopted on an emergency basis to establish the fee schedule and provide notice to affected persons in advance of the effective date of the legislation.

The new section is adopted on an emergency basis under House Bill 504, §9, Acts of the 71st Legislature, 1989, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of that Act.

§3.198. Pump Labelling Inspection Fees.

(a) A monthly fee, determined under subsection (b) of this section, is imposed on every person required to hold a permit as a distributor of motor fuel under the Tax Code, Chapter 153. The fee is imposed to provide funds for administering and enforcing a new law requiring labelling of pumps through which fuel containing ethanol or methanol is sold.

(b) For the period beginning January 1, 1990, and ending August 31, 1990, the amount of fee shall be determined on the basis of the number of gallons of gasoline sold or used each month by the distributor for taxable purposes under Chapter 153, according to the following schedule:
Gallons  

1 to 249,999  $ 80  
250,000 to 999,999  $ 240  
1,000,000 to 2,999,999  $ 460  
3,000,000 to 9,999,999  $ 900  
10,000,000 to 24,999,999  $1,450  
25,000,000 and over  $1,990  

(c) Since fees in excess of the amount necessary to cover the cost of administering the program may not be collected, the schedule of fees will be evaluated and revised, if necessary, for periods beginning September 1, 1990.  

(d) The fees imposed by this section must be reported and paid monthly on forms prescribed by the comptroller. The report and payment must be made not later than the due date for the fuels tax return for the same gasoline.  

(e) In compliance with House Bill 504, §4(e), Acts of the 71st Legislature, 1989, the comptroller has determined on a preliminary basis that the following types of fuel are not sold in this state as mixtures with alcohol in sufficient quantities to warrant regulation:

1. diesel fuel;  
2. liquefied petroleum gas; and  
3. aviation gasoline sold to an aviation fuel dealer for delivery exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment.  

Issued in Austin, Texas on December 20, 1989.  

TRD-8912196  Bob Bullock  
Comptroller of Public Accounts  
Effective date: January 1, 1990  
Expiration date: May 1, 1990  
For further information, please call: (512) 463-4004  

Subchapter Y. Controlled Substances Tax  

• 34 TAC §3.681  

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of new §3.681, for a 60-day period effective December 30, 1989. The text of new §3.681 was originally published in the August 29, 1989, issue of the Texas Register (14 TexReg 4375).  

Issued in Austin, Texas on December 20, 1989.  

TRD-8912197  Wade Anderson  
Rules Coordinator  
Comptroller of Public Accounts  
Effective date: December 30, 1989  
Expiration date: February 28, 1990  
For further information, please call: (512) 463-4004  

• 34 TAC §3.682  

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of new §3.682, for a 60-day period effective December 30, 1989. The text of new §3.682 was originally published in the August 29, 1989, issue of the Texas Register (14 TexReg 4375).  

Issued in Austin, Texas on December 20, 1989.  

TRD-8912198  Wade Anderson  
Rules Coordinator  
Comptroller of Public Accounts  
Effective date: December 30, 1989  
Expiration date: February 28, 1990  
For further information, please call: (512) 463-4004  

• 34 TAC §3.683  

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of new §3.683, for a 60-day period effective December 30, 1989. The text of new §3.683 was originally published in the August 29, 1989, issue of the Texas Register (14 TexReg 4376).  

Issued in Austin, Texas on December 20, 1989.  

TRD-8912199  Wade Anderson  
Rules Coordinator  
Comptroller of Public Accounts  
Effective date: December 30, 1989  
Expiration date: February 28, 1990  
For further information, please call: (512) 463-4004

• 34 TAC §3.684  

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of new §3.684, for a 60-day period effective December 30, 1989. The text of new §3.684 was originally published in the August 29, 1989, issue of the Texas Register (14 TexReg 4376).  

Issued in Austin, Texas on December 20, 1989.  

TRD-8912198  Wade Anderson  
Rules Coordinator  
Comptroller of Public Accounts  
Effective date: December 30, 1989  
Expiration date: February 28, 1990  
For further information, please call: (512) 463-4004  

TITLE 40. SOCIAL SERVICES AND ASSISTANCE  
Part IX. Texas Department of Aging  
Chapter 255. State Delivery Systems  
Statutes and Regulations  
• 40 TAC §255.39  

The Texas Department on Aging adopts an emergency basis new §255.39, concerning implementation of a funding formula for funding of retired senior volunteer programs (RSVP) in the state. The Texas Board on Aging, in their meeting of December 14, 1989, adopted a funding formula for the distribution of the additional $100,000 of revenue provided by the state legislature for distribution to the 33 retired senior volunteer programs in Texas. The Texas Department on Aging has determined that this action is necessary to permit immediate flow of funds to the RSVP projects. The new section is adopted on an emergency basis under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to adopt rules governing the function of the department.
§255.39. Funding Allocation Formula for Retired Senior Volunteer Program Projects.

(a) Fiscal year 1989 funding awarded to each of the retired senior volunteer program (RSVP) projects will serve as a base for fiscal year 1990/1991 funding.

(b) One hundred thousand dollars in state revenue allocated to the Texas Department on Aging by the 71st Texas Legislature for funding of RSVP projects will be distributed as follows:

(1) Two thousand dollars will be awarded to each of the current 33 RSVP projects to reinstate fiscal year 1985 cuts in funding to the 31 RSVP projects which were in operation during fiscal year 1985.

(2) The remainder of the funds, or $34,000, will be distributed to provide additional match to the 25 RSVPs that currently do not receive sufficient amounts to meet the federally required 30% match, in the amount of $1,360 for each project.

Issued in Austin, Texas, on December 19, 1989.

TRD-8912158  O. P. (Bob) Bobbitt
Executive Director  Texas Department on Aging

Effective date: December 19, 1989
Expiration date: April 18, 1990
For further information, please call: (512) 444-5727

Part X. Texas Employment Commission

Chapter 303. Child Labor

• 40 TAC §303.1

The Texas Employment Commission is amending the effectiveness of the emergency adoption of new §303.1, for a 60-day period effective December 30, 1989. The text of new §303.1 was originally published in the September 5, 1989, issue of the Texas Register (14 TexReg 4511).

Issued in Austin, Texas on December 1, 1989.

TRD-8912149  Carolyn Calhoun
Administrative Technician
Texas Employment Commission

Effective date: December 30, 1989
Expiration date: February 28, 1990
For further information, please call: (512) 483-2291
Proposed Sections

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

Symbology in proposed amendments. New language added to an existing section is indicated by the use of bold text. [Brackets] indicate deletion of existing material within a section.

TITLE 16. ECONOMIC REGULATION
Part I. Railroad Commission of Texas
Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

16 TAC §3.37

The Railroad Commission of Texas proposes an amendment to §3.37 of 16 TAC (Statewide Rule 37), concerning regulation of well spacing. Amended §3.37(a)(2) expands the pool of persons required to receive notice when a Rule 37 spacing exception is requested. Amended §3.37(h)(1) conforms with the new requirements of Texas Civil Statutes, Article 6252-13a, §16(b) and (e) as enacted by the 71st Legislature.

Rita Percival, systems analyst for the oil and gas division, has determined that for the first five-year period the section is in effect there will be no fiscal implications as a result of enforcing or amending the proposed amendment. There will be no effect on local government nor cost of compliance for small businesses as a result of this proposed amendment.

Phillip Danks, hearing examiner, Legal Division, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be informing the public of all who must be given notice when an exception to Rule 37 is sought. Further benefits will be informing the public of the extension of time to file a motion for rehearing and avoiding confusion of that might exist due to the current inconsistency between Rule 37(h)(1) and Texas Civil Statutes, Article 6252-13a, §16(b) and (e).

Amended §3.37(a)(2) provides that an applicant requesting an exception to Rule 37 must file a list of mailing addresses of all affected adjacent lessees of record for those leased tracts that have no designated operator. Additionally, the applicant must file a list of mailing addresses of all affected lessees of record for leased tracts that have no operator. Under current §3.37(a)(2), applicants must file a list of addresses only for affected adjacent offset operators and leased mineral interest owners, and for all affected operators and leased mineral interest owners of tracts nearer to the well than the prescribed minimum lease line distance.

Amended §3.37(h)(1) provides that orders granting exceptions to Rule 37 will have language informing the applicant that the order becomes final 20 days after it is mailed to the parties by the commission. A party at interest making a motion for rehearing must do so within the 20 day period. Previously, orders became final 15 days after they were signed and motions for rehearing had to be made within the same time period.

Comments on the amendment may be submitted to Phillip Danks, Hearing Examiner, Oil and Gas Section, Legal Division P.O. Drawer 12927, Austin, Texas 78711-2927. Written comments will be received for 30 days from the date of publication of the proposed amendment.

The amendment is proposed under the Texas Natural Resources Code, §§81.051, 85.042, 55.051, 85.201, 85.202, 85.203, 85.205, and 85.042, which provide the Railroad Commission of Texas with the authority to amend rules that are necessary to administer and regulate spacing of oil and gas wells.

§3.37. Statewide Spacing Rule.

(a) Distance requirements.

(1) No change.

(2) When exception to this section is desired, application shall be made by filing the proper fee as provided in §3.76 of this title (relating to Fees Required to be Filed) and the appropriate form according to the instructions on the form, accompanied by a plat as described in subsection (c) of this section. The applicant shall also file a list of the mailing addresses of:

(A) all affected adjacent offset operators;

(B) all lessors of record for affected adjacent tracts that have no designated operator; and

(C) all affected adjacent leased mineral interest owners. [all affected adjacent offset operators and leased mineral interest owners, and] Additionally, the applicant shall file a list of mailing addresses of all affected operators, lessees of record for leased tracts that have no operator and leased mineral interest owners of tracts nearer to the well than the prescribed minimum lease line distance. Such application shall be certified by some person acquainted with the facts, stating that all facts therein are true and within the knowledge of such person and that the accompanying plat is accurately drawn to scale and correctly reflects all pertinent and required data.

(3) An exception may be granted pursuant to paragraph (h)(2) of this section, or after a public hearing held after at least 10 days notice to all persons described in subsection (a)(2) of this section. [affected adjacent offset operators and leased mineral interest owners, and all affected offset operators and leased mineral interest owners of tracts nearer to the well than the prescribed minimum lease line distance requirement.] At any such hearing, the burden shall be on the applicant to establish that an exception to this section is necessary either to prevent waste or to prevent the confiscation of property. For purposes of giving notice of an application for an exception, the commission will presume that every person described in subsection (a)(2) of this section [adjacent offset operator and leased mineral interest owners and every operator and leased mineral interest owner of tracts nearer to the well than the minimum lease line distance requirement] will be affected by the application, unless the Oil and Gas Division Director or the director’s delegate determines they are unaffected. Such determinations will be made only upon written request and a showing by the applicant that:

(A) competent, conclusive geological or engineering data indicate that no drainage of hydrocarbons from the particular tract(s) subject to the request will occur due to production from the applicant’s proposed well; and

(B) notice to the particular operator(s), lessor(s) of record or leased mineral interest owner(s) would be unduly burdensome or expensive.

(b)(g) (No change.)

(h) Exceptions to Rule 37.

(1) An order [Orders] granting an exception [exceptions] to Rule 37 wherein protest is had shall carry as its last paragraph the following language: It is further ordered by the commission that this order shall not become final [and become effective] until 20 [15] days after it is actually mailed to the parties by the commission [signed by the commission]; provided that
if a motion for rehearing of the application is [be] filed by any party at interest within such 20 [15] day period, this order shall not become final [effective] until such motion is overruled, or if such motion [is] [be] granted, this order shall be subject to further action by the commission. Permits issued pursuant to subsection (h)(2) shall be issued without the 20-day [15-day] waiting period.

(2) (No change.)

(i)-(m) (No change.)

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

Issued in Austin, Texas on December 20, 1989.

TRD-8912203

Crll Payne
Assistant Director, General Law
Railroad Commission of Texas

Earliest possible date of adoption: January 26, 1990

For further information, please call: (512) 463-7187

Chapter 7. Gas Utilities Division

(Substantive Rules)

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

The Railroad Commission of Texas proposes the repeal of §7.42, concerning the administration of the gas utility tax authorized under Texas Civil Statutes, Article 6060. In addition, the commission proposes new §7.42. This section outlines the procedures to be followed in paying the gas utility tax and sets forth the revenues which are subject to and exempt from the tax. Additionally, in order to determine taxable gross income, a deduction of certain costs is provided for under proposed new §7.42. The 71st legislature amended Texas Civil Statutes, Article 6060, by raising the gas utility tax rate from one-fourth of one percent to one half of one percent and by significantly reducing the revenue subject to the tax. This rule is proposed solely to implement the recent legislative amendments to Texas Civil Statutes, Article 6060.

Steve Newberry, manager, Gas Utility Audit, has determined that there will be no fiscal implications for local government as a result of enforcing or administering this repeal.

Mr. Newberry and Mr. Hunter have further determined that the proposed repeal will have no effect on small businesses.

Mr. Hunter has further determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be proper assessment and collection of the gas utility tax as required by law.

The anticipated economic cost to persons who are required to comply with Texas Civil Statutes, Article 6060, as amended by the legislature, will be a decrease in the amount of the gas utility tax paid.

Comments on the proposal may be submitted to Thomas S. Hunter, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the Texas Register.

§ 7.42. Gas Utility Tax.

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

Issued in Austin, Texas, on December 18, 1989.

TRD-8912207

Crll Payne
Assistant Director, General Law, Legal Division
Railroad Commission of Texas

Earliest possible date of adoption: January 26, 1990

For further information, please call: (512) 463-7009

The new section is proposed under Texas Civil Statutes, Article 6060, which authorize the commission to adopt rules necessary to the administration, collection, and enforcement of taxes imposed by Article 6060.

§ 7.42. Gas Utility Tax.

(a) Tax imposed. Every gas utility as described in Texas Civil Statutes, Article 6050, §1(b), shall report and pay a gas utility tax as required by Texas Civil Statutes, Article 6060. The gas utility tax is imposed on the gross income received from all activity performed by the gas utility in Texas. The rate of the tax is one-half of one percent of the gross income subject to the tax.

(b) Tax payment. Each gas utility on which this tax is imposed shall report and pay to the Railroad Commission of Texas the tax imposed by February 20, May 20, August 20, and November 20 for the calendar quarter next preceding. The gas utility tax report shall be of a form and content as established by the Transportation/Energy Utilities Division and shall be completed in all detail as requested. The payment shall be made payable to the State Treasurer and be received by the commission on or before the dates listed above.

(c) Definitions. For purposes of assessing the gas utility tax the terms below are defined as follows.

(1) Gross income—Shall be equal to the total gross receipts from any activity described in Texas Civil Statutes, Article 6050, §1(b), less a deduction of the costs paid to another person for purchasing, treating, or storing natural gas or for gathering or transporting natural gas to the facilities of the gas utility.

(2) Gross receipts—Shall be equal to the total revenue received from the sale and/or transportation of gas which is properly accounted for in accordance with the National Association of Regulatory Utility Commissioners' (NARUC) Uniform System of Accounts, or the Federal Energy Regulatory Commission (FERC) system of accounts as specified in §7.43 of this title relating to Gross Receipts Tax. Revenue reported in NARUC or FERC Account Numbers 480, 481, 482, 483, 484, 489, and any other applicable gas sales or transportation accounts shall be subject to the gas utility tax. If an allocation of costs is made to the transmission function, and approved by the commission, upon which the gas utility tax is paid by a gas utility which engages in both transmission and distribution of natural gas, then no additional gas utility tax as provided herein shall be paid on the distribution function. If, however, no such allocation is made, then such gas utility shall be required to pay the gas utility tax on sales to end-use customers. A properly authorized gate rate shall be deemed to constitute a sufficient allocation of transmission costs.

(3) Treating—Shall be any process designed to make gas of pipeline quality.

(d) Exemptions. The following revenues shall be exempt from the gas utility tax:

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

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

(3) revenues received from the owners of irrigation wells or any other direct agricultural use for the transportation or sale of gas to such owner;

14 TexReg 6854 December 26, 1989 Texas Register
period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Brindley, Jr., M.D., also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to enable certain examination applicants who file their applications in a timely fashion to receive partial refund under specific conditions. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing will be held at a later date.

The new section is proposed under Texas Civil Statutes, Article 4495b, which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

§175.4. Partial Refund. Fees for processing an application for complete or partial licensure examination in June may be subject to a partial refund equal to the cost of FLEX if the applicant requests a refund before April 1, because the applicant has been accepted in an out-of-state training program starting in June or July as the result of the National Matching Program and elects to not take the June FLEX in Texas.

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

Issued in Austin, Texas, on December 18, 1989.

TRD-8912200

Crlr Payne
Assistant Director, General Law, Legal Division
Railroad Commission of Texas

Earliest possible date of adoption: January 26, 1990

For further information, please call: (512) 463-7009

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TITLE 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

Chapter 175. Schedule of Fees and Penalties

• 22 TAC §175.4

The Texas State Board of Medical Examiners proposes new §175.4, concerning conditions for a partial refund. The section will allow June Federation Licensing Examination (FLEX) applicants who file their licensure applications in February to receive refunds if the March National Matching Program results place them in out-of-state training programs starting in June or July.

G. V. Brindley, Jr., M.D., executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Brindley, Jr., M.D., also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to enable certain examination applicants who file their applications in a timely fashion to receive partial refund under specific conditions. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing will be held at a later date.

The new section is proposed under Texas Civil Statutes, Article 4495b, which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

§175.4. Partial Refund. Fees for processing an application for complete or partial licensure examination in June may be subject to a partial refund equal to the cost of FLEX if the applicant requests a refund before April 1, because the applicant has been accepted in an out-of-state training program starting in June or July as the result of the National Matching Program and elects to not take the June FLEX in Texas.

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

Issued in Austin, Texas, on December 18, 1989.

TRD-8912200

G. V. Brindley, Jr., M.D.
Executive Director
Texas State Board of Medical Examiners

Earliest possible date of adoption: January 26, 1990

For further information, please call: (512) 452-1078

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TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 7. Corporal and Financial

Subchapter P. Third Party Administrators; Examinations, Licenses

• 28 TAC §87.1601-1.1622

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

The State Board of Insurance proposes the repeal of §§87.1601-7.1622, concerning measures to facilitate administration of the licensing and examination of third party administrators. The measures were based on an emergency basis and became effective on September 1, 1989. Notice of the emergency adoption appeared in the September 12, 1989, issue of the Texas Register (14 TexReg 4631). The proposed repeals of §§87.1601-7.1622 as Subchapter P, concerning third party administrators; examinations, licenses, is simultaneous with the proposal of new §§87.1601-7.1613, as Subchapter P, concerning licensing and examination of third party administrators. Notice of the proposal of the new sections appears elsewhere in this issue of the Texas Register. Repeal of §§87.1601-7.1622 is necessary to enable the board to adopt new §§87.1601-7.1613 to provide for consistency, efficiency, and clarity in the administration of the licensing and regulation of third party administrators in accordance with the provisions of the Insurance Code, Article 21.07-6, effective September 1, 1989. Existing §§87.1601-7.1622 were adopted under the Insurance Code, Article 21.07-5, which the 71st Legislature repealed effective September 1, 1989.

Jack Evins, deputy insurance commissioner for licensing, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There will be no effect on local employment or local economy.

Jack Evins also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be provision for the proper functioning of administrative regulation of the business of insurance and related activities in Texas. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Beverly McVey, Manager of Company License Section, State Board of Insurance, Mail Code 014-4, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The repeals are proposed under the Insurance Code, Article 1.04 and Article 21.07-6, §2; and under Texas Civil Statutes, Article 6252-13a, §5. The Insurance Code, Article 1.04, authorizes the State Board of Insurance to adopt rules in accordance with the laws of this state. The Insurance Code, Article 21.07-6, §2, authorizes the board to establish and promulgate rules, regulations, minimum standards, or limitations that are fair and reasonable as may be appropriate for the augmentation and implementation of the article, which relates to regulation of third party administrators. Texas Civil Statutes, Article 6252-13a, §5, prescribes the procedure for adoption of rules by any state administrative agency.

• Proposed Sections December 26, 1989 14 TexReg 6855
§7.1601. Definitions.

§7.1602. Third Party Administrator or TPA Defined.


§7.1604. Form Filings.

§7.1605. Certificate of Authority Required.


§7.1607. Approval by the Commissioner; Hearings.

§7.1608. Denial, Refusal, Suspension, or Revocation of Certificate of Authority.

§7.1609. Service Contract.


§7.1611. Fiduciary Duties and Responsibilities.


§7.1613. Confidentiality.


§7.1617. Exemption.

§7.1618. Nonapplicability.

§7.1619. Fees.

§7.1620. Security Deposit or Surety Bond.

§7.1621. Date for Compliance.

§7.1622. Maintenance Tax on Gross Amount of Administrative or Service Fees.

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

Issued in Austin, Texas, on December 20, 1990.

TRD-8912190
Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: January 26, 1990
For further information, please call: (512) 463-6327

• 28 TAC 7.1601-7.1613

The State Board of Insurance proposes new §§7.1601-7.1613, concerning measures to facilitate administration of the licensing and examination of third party administrators. Sections 7.1601-7.1613 were adopted on an emergency basis and became effective on September 1, 1989. Notice of the emergency adoption appeared in the September 12, 1989, issue of the Texas Register (14 TexReg 4631). The proposal of new §§7.1601-7.1613 as Subchapter P, concerning licensing and examination of third party administrators, is simultaneous with the proposed repeal of existing §§7.1601-7.1622, concerning third party administrators; examinations, licenses. Notice of the proposed repeal appears elsewhere in this issue of the Texas Register. The new sections are necessary to provide for consistency, efficiency, and clarity in the administration of the licensing and regulation of third party administrators, in accordance with the provisions of the Insurance Code, Article 21.07-5, effective September 1, 1989. The new sections establish guidelines and procedures for the supervision and licensing of persons who collect premiums or contributions from or who adjust or settle claims in connection with life, health, and accident benefits or annuities for residents of this state. Adoption of these new sections includes adoption by reference of forms for use in administrative regulation of third party administrators. The board has filed copies of the forms with the Secretary of State's Office, Texas Register Section. Persons desiring copies of the forms can obtain copies from the Third Party Administrator Unit, Mail Code 014-11, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1966.

Jack Evins, deputy insurance commissioner for licensing, has determined that for the first five-year period that proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The cost of compliance for small businesses and for all persons who are required to comply with the proposed sections will include the cost of completing the forms and reports and of complying with the procedures established by these sections, which is estimated at less than $100 per form or less than $1,000 per annual report, along with the cost of maintaining books and records, which it estimated at less than $5,000 per year. On the basis of the cost per hour of labor, there is no anticipated difference in these costs of compliance between small and large businesses. Also included in the cost of compliance for all persons required to comply with these sections are the costs under §7.1607 and the cost of a fidelity bond under §7.1612. The cost of the fidelity bond will remain constant or will increase at a rate less than the rate of increase in sales or premium income of a business. There is no anticipated effect on local employment or local economy.

Mr. Evins also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be implementation of the Insurance Code, Article 21.07-6, with administrative consistency, efficiency, and clarity in the licensing and regulation of third party administrators. The anticipated economic cost to persons who are required to comply with the sections as proposed will be the same as that described previously as the cost of compliance for small businesses.

Comments on the proposal may be submitted to Beverly McVey, Manager of Company Licensing Section, State Board of Insurance, Mail Code 014-4, 1110 San Jacinto Boulevard, Austin, Texas 78701-1968.

The new sections are proposed under the Insurance Code, Article 1.04 and Article 21.07-6, §2, and under Texas Civil Statutes, Article 6252-13a, §5. The Insurance Code, Article 1.04, authorizes the State Board of Insurance to adopt rules in accordance with the laws of this state. The Insurance Code, Article 21.07-6, §2 provides the board with authority to promulgate reasonable rules and regulations that are fair and reasonable as may be appropriate for the augmentation and implementation of the article, which relates to regulation of certain third party administrators. Texas Civil Statutes, Article 6252-13a, §5, prescribe the procedure for adoption of rules by any state administrative agency.

§7.1601. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Administrative or services fees—The total gross amount of all consideration, fees, assessment, payments, reimbursements, dues, and any other compensation, monetary or otherwise, received by a third party administrator during the taxable year. Administrative or service fees will not include sales commissions received by an administrator that has a valid agent's license or lawfully distributed by the administrator to licensed agents or other sales representatives.

Administrator, third party administrator, or TPA—A person who collects premiums or contributions from, or who adjusts or settles claims in connection with life, health, and accident benefits or annuities for residents of this state, but the term does not include those persons to the extent their operations are specifically excluded in the Insurance Code, Article 21.07-6, §(1)(A)-(Q).

Functions of a group policyholder—All services, functions, duties, or activities which may lawfully be delegated to a policyholder pursuant to a contract between an insurer and a group policyholder.

Plan—A plan, fund, or program established, adopted, or maintained by a plan sponsor or issuer, or person to the extent that the plan, fund, or program is established, adopted, or maintained to provide:

(A) indemnification or expense reimbursement for a life, health, or accident benefit; or
(B) an individual or group
annuity business.

Trade name—An assumed name or
dba (doing business as) which is used by
an administrator in its operations or activi-
ties with residents of this state.

§7.1602. Forms Relating to Regulation of
Administrators Under the Insurance Code.
Article 21.07-6. The State Board of Insur-
ance adopts and incorporates herein by ref-
erece standard administrator forms for use
in the administrative regulation of adminis-
trators. Applicants and licensed adminis-
trators are required to utilize these forms in
preparing applications, statements, notices
of required information, and other submis-
sions required under the Insurance Code,
Article 21.07-6, and this subchapter. These
forms are published by the State Board of
Insurance and may be obtained from the
Third Party Administrator Unit, Mail Code
014-11, State Board of Insurance, 1110 San
Jacinto Boulevard, Austin, Texas 78701-
1998. These forms are more specifically
identified as follows:

(1) TPA Form Number 1, Name
Application, effective September 1, 1989;
(2) TPA Form Number 1A, As-
sumed Name Certificate, effective Septem-
ber 1, 1989;
(3) TPA Form Number 2, Ap-
lication for Certificate of Authority, effec-
tive September 1, 1989;
(4) TPA Form Number 2A, Sup-
plemental Information/Annual Report,
effective September 1, 1989;
(5) TPA Form Number 3, Offi-
cers and Directors Page, effective Septem-
ber 1, 1989;
(6) TPA Form Number 4, Bio-
ographical Affidavit, effective September 1,
1989;
(7) TPA Form Number 5, Ser-
vice of Process, effective September 1,
1989; and
(8) TPA Form Number 6, Iden-
tification and Reporting of Certain Insurers
and Health Maintenance Organizations, ef-
fective September 1, 1989.

§7.1603. Application for Certificate of
Authority.

(a) Any person who collects premi-
ums or contributions from, or who adjusts
or settles claims in connection with life,
health, and accident benefits or annui-
ties for, residents of this state, but not includ-
ing those persons to the extent their operations
are specifically excluded in the Insurance
Code, Article 21.07-6, §(1)(A)-(Q), must
apply for a license to operate as a third
party administrator within 60 days after
September 1, 1989.

(b) Applications for certificate of
authority shall be made in the name of the
corporation, partnership, or sole proprie-
tor on TPA Form 2. The certificate of authority
when issued shall extend to the officers and
managers of the corporation so long as they
remain in that capacity and are qualified to
act as an officer or manager of that corpo-
rate TPA; to each of the partners of the
partnership so long as they remain in that
capacity and are qualified to act as a partner
of that partnership TPA; and to the sole
proprietor of such sole proprietor TPA. The
certificate of authority when issued shall
not extend to any employees, agents, or
subcontractors of the applicant.

(c) A certificate of authority that
was issued to an administrator under the
Insurance Code, Article 21.07-5, is in effect
as if it were issued under the Insurance
Code, Article 21.07-6, and the administrator
is subject to the provisions of the Insurance
Code, Article 21.07-6. An administrator that
has submitted all or part of the documents
required for the application of a certificate
of authority under the Insurance Code, Arti-
cle 21.07-5, will be required to submit only
those documents needed to make the appli-
cation administratively complete.

(d) If any of the items required un-
der this subchapter are absent or deemed
insufficient by the commissioner, the com-
misssioner shall notify the applicant and the
applicant shall be given a reasonable time
to correct said deficiencies. If, after the
reasonable time has expired, the deficien-
cies have not been corrected, then the com-
misssioner will notify the applicant by let-
ter that, if the applicant does not request an
opportunity for a hearing, the application
will be withdrawn without prejudice by the
commissioner.

(e) Applicants may formally re-
quest by letter to the commissioner that
their application be withdrawn from the
consideration process anytime prior to the
issuance of a certificate of authority,
thereby avoiding being considered for deni-
al. However, an applicant must not have
functioned or be functioning as an adminis-
trator under the Insurance Code, Article
21.07-6, in this state when requesting with-
drawal of an application. In the event an
application is withdrawn, any fees submit-
ted with the application will not be refund-
ed. After a withdrawal and prior to commencing any administrator activities in
this state, applicants must submit an entirely
new application with appropriate fees.

§7.1604. Application Denial, Suspen-
sion, Cancellation, or Revocation.

If the commisssioner denies the applica-
tion, the affected party may not resubmit a new
application for a period of time not less
than one year from the date of denial: If the
commissioner suspends a certificate of au-
thority, the affected party may not operate for
a period of time certain as specified in the
suspension order which may not exceed
one year from the date of suspension. If the
commissioner cancels or revokes a certifi-
cate of authority, the affected party may not
resubmit a new application for a period of
time not less than one year from the date of
the cancellation or revocation.


(a) Each applicant for TPA certifi-
cate of authority will complete TPA Form 2
in compliance with requirements in the In-
surance Code. Article 21.07-5, and further
requirements detailed in this subchapter.
TPA Form 2 will be completed as pre-
scribed and accompanied by such docu-
ments, statements, notices, and attachments
necessary to support the application. Appli-
cants with a relationship or affiliation such
as a commonality of management, owner-
ship, and/or consolidated financial informa-
tion may, upon written request and approval
of the commissioner, be permitted to submit
only one copy of the required information
to avoid duplicative filings by such related
or affiliated applicants. Applicants will be
provided a listing of documents required to
complete their application.

(b) Each applicant must reserve its
name by completing TPA Form 1. The
name of the entity on the TPA Form 1 must
agree in complete detail with the actual
legal name of the applicant. A TPA shall
transact business in its own name, which
shall not closely resemble the name of any
other insurer or TPA doing business in this
state. If the name does resemble the name of
any other insurer or TPA, the applicant
TPA may do business under a trade name.
If a trade name is to be used in this state,
the applicant must complete TPA Form 1A
to reserve the use of the trade name.

(c) One complete, originally signed
copy of each statement, notice, form, or
application, including exhibits and all other
papers and documents filed as a part there-
of, shall be filed with the commissioner of
insurance and addressed to: Third Party Ad-
ministrator Unit, Mail Code 014-11, State
Board of Insurance, 1110 San Jacinto Bou-
levard, Austin, Texas 78701-1998.

(d) Statements, notices, forms, and
applications should be prepared on paper 8
1/2 inches by 11 inches in size. All copies
of any statement, notice, application, exhib-
it, or financial statement shall be clear,
easily readable, and suitable for microfil-
ing and photocopying. Debts in credit catego-
ries and credits in debit categories shall be
designated so as to be clearly distinguish-
able as such on microfilm and photocopies.
Statements, notices, and applications shall
be stated in the English language and mon-
tary values shall be stated in United States
currency. If any exhibit or other paper or
document filed with a statement, notice, or
application is in a foreign language, it shall
be accompanied by an accurate English lan-
guage translation, and any monetary value
other than in United States currency shall

* Proposed Sections December 26, 1989 14 TexReg 6857
be converted into United States currency and the rate of exchange used shall be as of the date of the financial statement filed by the applicant.


(a) An insurer who otherwise collects premiums or contributions from or adjusts or settles claims in connection with life, health, and accident benefits or annuities for residents of this state may not act as or hold itself out as an administrator unless it has notified the commissioner of its intent to do business under the Insurance Code, Article 21.07-6, except to the extent its operations or activities are exempt as described in subsection (b) of this section.

(b) Exempt operations or activities are those operations which exclusively consist of either:

1. an insurance company which is collecting premiums for or adjusting or settling claims under its own insurance policies or annuities; or

2. a health maintenance organization authorized to operate in this state under the Texas Health Maintenance Organization Act for the following purposes:

   a. collecting revenues on its own behalf for evidences of coverage that it has issued and delivered under state law;

   b. making a contract or settling claims under evidences of coverage issued and delivered by it under state law, including the contracting with and payment to providers for performing services, verification of eligibility, and subrogation;

   c. collecting premiums, adjusting, or settling claims for insurance which was issued incidental or supplemental to its lawfully issued and delivered evidences of coverage; and

   d. performing any other activity that is specifically regulated by the Texas Health Maintenance Organization Act, or exempt under this Act or through operation of federal law.

(c) Insurers specifically described in subsection (a) of this section are subject to all the provisions of this subchapter except for §7.1603 of this title (relating to Application for Certificate of Authority), §7.1605 of this title (relating to Application Procedures), §7.1611 of this title (relating to Supplemental Information Report), and §7.1612 of this title (relating to Fidelity Bond) and are subject to any other appropriate statutes and regulations. The following provisions in paragraphs (1)-(3) of this subsection apply to such insurer.

1. Each insurer must transact business under the name in which it holds a certificate of authority.

2. Every insurer that is operating as an administrator must notify the commissioner, on TPA Form 6, of its activities as an administrator within 60 days after September 1, 1989, or prior to commencing operations.

3. Every insurer shall, on or before March 1 of each calendar year, prepare and submit to the commissioner an annual report on a completed TPA Form 6, concerning the insurer’s organization, operation, and status as an administrator with respect to Texas risk for the preceding calendar year.

§7.1607. Fees. The commissioner shall collect, and the person affected shall pay to the commissioner, the following fees:

1. $500 filing fee for processing an original application for a certificate of authority;

2. $250 on-site visit examination fee as specified in the Insurance Code, Article 21.07-6, §8; and

3. $100 filing fee for annual report.

§7.1608. Prohibited Transactions. A TPA may not engage in any of the activities listed in the following paragraphs:

1. misrepresenting the terms, advantages, or nature of its service contract;

2. making false or incomplete comparisons with the service contracts of other TPAs or persons in order to induce a plan, insurer, or person to enter into, continue, or discontinue any service contract with the TPA;

3. accepting or rejecting risk other than in compliance and in accordance with the terms of the written agreement structured under the requirements of the Insurance Code, Article 21.07-6, §11;

4. publishing or circulating any advertising or informational material, benefit descriptions, certificates, booklets, or brochures pertaining to business underwritten by a plan, insurer, or plan sponsor without the advance written approval of such plan, insurer, or plan sponsor; or

5. designing, constructing, or implementing barriers under the written agreement that would unreasonably restrict the right of a plan participant to avail himself of individual life, health, or accident policies or annuities through an agent selected by the plan participant.

§7.1609. On-Site Visits.

(a) The commissioner or his designated representative is authorized to make a complete on-site visit examination of the affairs of each administrator as often as is deemed necessary.

(b) Administrators will be notified of the scheduled on-site visit by letter, which will specify, as a minimum, the identity of the commissioner's designated representative and the expected arrival date and time.

(c) The administrator must make available during such on-site visits all books and records relating to its operation, including, but not limited to, the following specific information:

1. complete copies of any written agreements as defined in the Insurance Code, Article 21.07-6, §11; and

2. financial statements.

§7.1610. Cease and Desist Orders. The commissioner is authorized pursuant to the Insurance Code, Article 11.10A, to issue emergency cease and desist orders prior to notice and hearing if it appears to the commissioner that the alleged misconduct is fraudulent or creates an immediate danger to the public safety or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.


(a) Every TPA must ensure that the commissioner is informed, on TPA Form 2A, within 20 days of any change in ownership, officers, directors, partners, sole proprietors, or any other significant change that might have an impact on the TPA's operations or certificate of authority.

(b) Every TPA shall, on or before March 1 of each calendar year, prepare and submit to the commissioner a sworn report on a completed TPA Form 2A, concerning the TPA's organization, operations, and status for the preceding calendar year.

(c) An administrator shall notify and deliver a copy of any order or judgment to the commissioner within 30 days of the occurrence in another state of any one or more of the following actions:

1. suspension or revocation of the administrator’s right to do business;

2. receipt of an order to show cause why its license should not be suspended or revoked;

3. imposition of any penalty, forfeiture, or sanction on it for any violation of the insurance laws of such other state; or

4. any of the actions in paragraphs (1)-(3) of this subsection with respect to any of an administrator’s partners, directors, officers, or persons who own more than 10% of the voting interest of an administrator.
$7.1612. Fidelity Bond. The fidelity bond, as required by the provisions of the Insurance Code, Article 21.07-6, §6, will be equal to at least 10% of the amount of total funds handled during the preceding year or, if no funds were handled during the preceding year, 10% of the amount of funds reasonably estimated to be handled during the current calendar year. In no event will the fidelity bond be less than $10,000 nor will a fidelity bond be required in excess of $500,000. Funds handled will be as defined in the Insurance Code, Article 21.07-6, §6(d).

$7.1613. Maintenance Tax. Each administrator shall annually pay a maintenance tax on its correctly determined administrative or service fees with respect to risks located in this state. The maintenance tax rate will be determined annually or semi-annually by the board but may not exceed 1%. Each administrator shall complete and submit the maintenance tax on a tax form prescribed by the board.

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

Issued in Austin, Texas, on December 20, 1989.

TRD-8612189 Nicholas Murphy Chief Clerk State Board of Insurance

Earliest possible date of adoption: January 26, 1990

For further information, please call: (512) 463-6327

Chapter 33. Continuing Care Retirement Facilities

Subchapter A. General Provisions

• 28 TAC §§33.1-33.3

The State Board of Insurance purports amendments to §§33.1-33.3, concerning general provisions applicable to continuing care retirement facilities. The amendments were adopted on an emergency basis and became effective on September 1, 1989. Notice of the emergency adoption appeared in the September 8, 1989, issue of the Texas Register (14 TexReg 4572). These amendments necessary to remind persons operating or developing continuing care retirement facilities of the provisions of recent legislation. The amendment to §3.1 and the amendment to the definition of the word “Act” in §33.2 update the reference to the Texas Continuing Care Facility Disclosure and Rehabilitation Act. The amendment to the definition of the term “continuing care” in §33.2, as well as the amendment to §33.3(3), reflects the changes by House Bill 1475 of the 71st Legislature to terminology in the Act.

Jack Evins, deputy insurance commissioner for licensing, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There will be no effect on local employment or local economy.

Mr. Evins also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more effective administrative regulation of continuing care retirement facilities by implementing, facilitating, and requiring compliance with the Texas Continuing Care Facility Disclosure and Rehabilitation Act, as amended. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Tony Trevino, Insurance Examiner, Continuing Care Retirement Facility Unit, State Board of Insurance, Mail Code 014-10, 1110 San Jacinto Boulevard, Austin, Texas 78701-1008.

The amendments are proposed under Texas Civil Statutes, Article 8876, §3, which provides that the State Board of Insurance may adopt rules as necessary to administer and enforce statutory provisions regulating providers of health-related services and other continuing care to individuals in this state.

§33.1. Purpose. The provisions of this chapter implement the Texas Continuing Care Facility Disclosure and Rehabilitation Act [enacted as House Bill 677, 70th Legislature, 1987], first effective September 1, 1987, and codified as Texas Civil Statutes, Article 8876, as amended.

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

Act—The Texas Continuing Care Facility Disclosure and Rehabilitation Act [enacted as House Bill 677, 70th Legislature, 1987], first effective September 1, 1987, and codified as Texas Civil Statutes, Article 8876, as amended.

Continuing care—the furnishing to an individual who is not related by consanguinity or affinity to the person furnishing the care, of a living unit [board and lodging], together with personal care services, [and] nursing services, medical services, or other health-related services, regardless of whether or not the services and the living unit [lodging] are provided at the same location, under a contractual [an] agreement that requires the payment of an entrance fee and that is effective either for the life of the individual or for a period of more than one year.

§33.3. Scope. This chapter shall apply to a person operating or developing a facility if all of the following conditions are met.

1. (1) (No change.)

2. (A living unit is [Board and lodging are] furnished, together with personal care services, nursing services, medical services, or other health-related services, regardless of whether or not the services and the living unit [lodging] are provided at the same location.

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

Issued in Austin, Texas on December 20, 1989.

TRD-8912194 Nicholas Murphy Chief Clerk State Board of Insurance

Earliest possible date of adoption: January 26, 1990

For further information, please call: (512) 463-6327

Subchapter B. Facilities Qualifying for a Certificate of Authority under the Texas Continuing Care Facility Disclosure and Rehabilitation Act, §4(g)

• 28 TAC §§33.107, 33.108

The State Board of Insurance proposes amendments to §§33.107 and 33.108, concerning qualifying for a certificate of authority under the Texas Continuing Care Facility Disclosure and Rehabilitation Act (the Act), §4(g). The amendments were adopted on an emergency basis and became effective on September 1, 1989. Notice of the emergency adoption appeared in the September 8, 1989, issue of the Texas Register (14 TexReg 4572). These amendments are necessary to remind persons operating or developing continuing care retirement facilities of the provisions of recent amendments to the Act concerning licensing requirements. The amendment to §33.107 certifies the inapplicability of the Act, §4(g), to facilities that were not in fact offering or entering into continuing care contracts as of September 1, 1987, even though they had previously done so. The amendment to §33.108 deletes the requirement of compliance with the Act, §6, concerning escrow requirements for facilities qualifying under the Act, §4(g).

Jack Evins, deputy insurance commissioner for licensing, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There will be no effect on local employment or local economy.

Mr. Evins also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more effective administrative regulation of continuing care retirement facilities by implementing, facilitating, and requiring compliance with the Texas Continuing Care Facility Disclosure and Rehabilitation Act, as amended. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.
Comments on the proposal may be submitted to Tony Trevino, Insurance Examiner, Continuing Care Retirement Facility Unit, State Board of Insurance, Mail Code 014-10, 1110 San Jacinto Boulevard, Austin, Texas 78701-1986.

The amendments are proposed under Texas Civil Statutes, Article 8876, §3, which provide that the State Board of Insurance may adopt rules as necessary to administer and enforce statutory provisions regulating providers of health-related services and other continuing care to individuals in this state.

§33.107. Applicability of the Texas Continuing Care Facility Disclosure and Rehabilitation Act and Rules Thereunder to Facilities Covered by the Act, §4(g). The entire Act and the provisions of this chapter apply to facilities qualifying for certificate of authority under the Act, §4(g), except as follows.

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

(3) The provisions of the Act, §4(g), shall not apply to a facility that suspended or discontinued offering or entering into continuing care contracts during any period prior to September 1, 1987, and did not resume offering or entering into continuing care contracts by September 1, 1987.

§33.108. Transition Period.

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

(c) The provider of a facility that was occupied by one or more residents on September 1, 1987, must comply with the escrow requirements imposed under the Act, §8 and §9, not later than September 1, 1990. If the commissioner determines that such provider is unable to comply with this section after making a good faith effort to do so, the commissioner may by order extend the time for compliance for a reasonable period of time, not to exceed 180 days.

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

Issued in Austin, Texas on December 20, 1989.

TRD-8912193 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: January 26, 1990

For further information, please call: (512) 463-6327

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Chapter 33. Continuing Care Retirement Facilities
Subchapter E. Escrow Accounts

• 28 TAC §§33.401, 33.404, 33.405

The State Board of Insurance proposes amendments to §§33.401, 33.404, and 33.405, concerning escrow accounts to be maintained by continuing care retirement facilities. The amendments were adopted on an emergency basis and became effective on September 1, 1989. Notice of the emergency adoption appeared in the September 8, 1989, issue of the Texas Register (14 TexReg 4573). These amendments are necessary to remind persons operating or developing continuing care retirement facilities of the provisions of the Texas Continuing Care Facility Disclosure and Rehabilitation Act (the Act), concerning escrow accounts, as amended by House Bill 1475 of the 71st Legislature. The amendments to §33.401 delete the requirement for facilities qualifying under the Act, §4(g), to comply, by September 1, 1990, with the Act, §8, concerning escrow accounts, and this subchapter. The amendments to §33.404 and §33.405 change terminology to conform with changes by House Bill 1475 to terminology in the Act. In addition, the amendment to §33.405 adds subsection (e) to provide that the loan reserve fund requirements may be met by establishing other reserve funds to meet long-term financing obligations, and if the provider meets the requirements in this manner, the provider must submit evidence to that effect.

Jack Evans, deputy insurance commissioner for licensing, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There will be no effect on local employment or local economy.

Mr. Evans also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more effective administrative regulation of continuing care retirement facilities by implementing, facilitating, and requiring compliance with the Texas Continuing Care Facility Disclosure and Rehabilitation Act, as amended. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Tony Trevino, Insurance Examiner, Continuing Care Retirement Facility Unit, State Board of Insurance, Mail Code 014-10, 1110 San Jacinto Boulevard, Austin, Texas 78701-1986.

The amendments are proposed under Texas Civil Statutes, Article 8876, §3, which provide that the State Board of Insurance may adopt rules as necessary to administer and enforce statutory provisions regulating providers of health-related services and other continuing care to individuals in this state.

§33.401. Entrance Fee Escrow Accounts.

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

(e) The provider of a facility which was occupied by one or more residents on September 1, 1987, that enters into continuing care contracts on or after September 1, 1987, shall comply with the escrow requirements under the Act, §8, and this subchapter not later than September 1, 1990, unless the time is extended by the commissioner, pursuant to §33.108 of this title (relating to Transition Period).

§33.404. Release of Entrance Fees Before Facility Is Complete. The aggregate amount of entrance fees that may be released to the provider after the conditions of §33.403 of this title (relating to Release of Entrance Fees to Provider) have been met and before the date on which the loan reserve fund escrow is established as required by the Act, §9, may not exceed:

(1) (No change.)

(2) the amount of entrance fees received or receivable that are required to be maintained initially in the loan reserve fund escrow.

§33.405. Loan Reserve Fund Escrows.

(a) The provider of a facility which was not occupied by one or more residents on September 1, 1987, shall establish and maintain a loan reserve fund escrow pursuant to the Act, §9, with a bank or trust company located in Texas as escrow agent. The funds deposited therein shall be kept and maintained in an account separate and apart from the provider's business account and fully covered by federal deposit insurance or fully secured by the United States government.

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

(d) Until the required aggregate amount is reached, the loan reserve fund escrow account shall be funded by depositing entrance fees:

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

(e) The loan reserve fund requirements may be met in whole or in part by the provider as provided under the Act, §9(a), by establishing other reserve funds held to meet long-term financing obligations. The provider shall submit sufficient evidence that the requirement has been met.

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

Issued in Austin, Texas, on December 20, 1989.

TRD-8912192 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: January 26, 1990

For further information, please call: (512) 463-6327

♦ ♦ ♦ ♦ ♦

Subchapter F. Ongoing Regulatory Requirements
• 28 TAC §§33.505, 33.506

The State Board of Insurance proposes amendments to §§33.505 and 33.506, concerning ongoing regulatory requirements applicable to continuing care retirement facilities.
facilities. The amendments were adopted on an emergency basis and became effective on September 1, 1989. Notice of the emergency adoption appeared in the September 6, 1989, issue of the Texas Register (14 TexReg 4873). These amendments are necessary to ensure that the activities and financial condition of continuing care retirement facilities are monitored as contemplated by the Texas Continuing Care Facility Disclosure and Rehabilitation Act (the Act), as amended by recent legislation, and to remind persons operating or developing continuing care retirement facilities of the provisions of the Act and of House Bill 1475 of the 71st Legislature. The amendment to §33.505 deletes subsection (d), concerning long-term debt sinking fund requirements, which would now conflict with the Act, §4a, as amended. The amendment to §33.506 changes the deadline for filing actuaria reviews from September 1, 1988, to September 1, 1989, in accordance with statutory change.

Jack Evins, deputy insurance commissioner for licensing, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There will be no effect on local employment or local economy.

Mr. Evins also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more effective administrative regulation of continuing care retirement facilities by implementing, facilitating, and requiring compliance with the Texas Continuing Care Facility Disclosure and Rehabilitation Act, as amended. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Tony Trevino, Insurance Examiner, Continuing Care Retirement Facility Unit, State Board of Insurance, Mail Code 014-10, 1110 San Jacinto Boulevard, Austin, Texas 78701-1986.

The amendments are proposed under Texas Civil Statutes, Article 8876, §3, which provide that the State Board of Insurance may adopt rules necessary to administer and enforce statutory provisions regulating providers of health-related services and other continuing care to individuals in this state.

§33.506. Actuarial Review Requirements.
(a) (No change.)
(b) Initial filing requirements.
(1) Except as provided in paragraph (2) of this subsection, the provider of a facility subject to this section shall file with the commissioner its most current actuarial review, as defined in §33.2 of this title (relating to Definitions) before September 1, 1989 [1988].
(2) (c) (No change.)
(d) (c) (No change.)

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

Issued in Austin, Texas, on December 20, 1989.

TRD-8912191
Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: January 26, 1990
For further information, please call: (512) 463-6327

TITLE 31. NATURAL RESOURCES AND CONSERVATION
Part II. Texas Parks and Wildlife Department
Chapter 55. Law Enforcement
Boat Speed and Buoy Standards
• 31 TAC §§55.301-55.305


There is no standardized buoy marking system in Texas. Numerous types of buoys, signs, pilings, etc. are currently used to mark regulated areas throughout the public waters of this state. The proposed standardized system of buoys will aid boaters by removing confusion that now exists. The department is authorized to establish such a system under the Parks and Wildlife Code, §31.142. The proposed system is consistent with the worldwide system adopted by the United States Coast Guard in 1982.

Dexter Harris, water safety director, has determined that for the first five-year period the sections are in effect there will be minimal fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Harris also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the boating rules. The effect on small businesses as a result of enforcing the sections will be minimal. The anticipated economic cost to persons who are required to comply with the sections as proposed will be minimal.

Comments on the proposals may be submitted to Chester Burdett, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4648.

The new sections are proposed under the Texas Parks and Wildlife Code, §§31.002, 31.005, 31.142, which provides authority for the commission to establish boat speed and buoy standards and Texas Civil Statutes, Article 6252-13a.

§55.301. Application. The sections in this undesignated head apply to all public waters in the State of Texas.

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

Governing board—The governing board of an incorporated city or town, a commissioners' court of a county, or the governing board of a political subdivision of the state created pursuant to the Texas Constitution, Article XVI, §59, as identified in the Parks and Wildlife Code, §31.092(c).

Headway speed—Slow, idle speed or speed only fast enough to maintain steerage on course.

Regulated area—Any area on public water designated and posted "Slow, No Wake" area by the governing board.

Slow, No wake—Headway speed without creating a swell or wake.


§55.303. General Rules. The following rules shall govern the speed limits of moving vessels on all public waters of this state.

(1) Governing boards may establish regulated areas under procedures and rules set out in the Parks and Wildlife Code, §31.092, where these rules are determined to be necessary for public safety.

(A) Regulated areas shall be designated and posted as "Slow, No Wake" areas.

(B) Numerical speed limits such as miles per hour, shall not be used on public waters.

(C) Boats speeds outside of regulated areas shall be governed by the Parks and Wildlife Code, §31.095(a).
(D) The governing board shall post and maintain regulated areas with buoys or pilings consistent with the uniform state waterway buoy marking system authorized by these rules.

(2) Regulations governing water events and regattas administered by the United States Coast Guard are exempt from these rules to the extent of conflict.

§55.304. System of Markers.

(a) The uniform state waterway buoy marking system contained in 33 Code of Federal Regulations, §62.33 is hereby incorporated by reference for all public waters in this state.

(b) This federal regulation describes the meanings associated with various markers.

(c) This federal regulation is published in the Code of Federal Regulations. It may be obtained from any United States Depository Library or by writing the department.

§55.305. Penalties. The penalties for violation of this undesignated head are prescribed by the Texas Parks and Wildlife Code, §31.127.

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

Issued in Austin, Texas, on December 19, 1989.

TRD-8912162

Boyd Johnson
General Counsel
Texas Parks and Wildlife Department

Earliest possible date of adoption: January 26, 1990

For further information, please call: (512) 389-4805

Chapter 57. Fisheries

Potentially Harmful Fish, Shellfish, or Aquatic Plants

* 31 TAC §57.11-57.118

The Texas Parks and Wildlife Commission proposes amendments to §§57.11-57.118, concerning importation, possession, propagation, sale, or placement into waters of this state exotic fish, shellfish, and aquatic plants. The proposed amendments are to rules that were adopted by the Texas Parks and Wildlife Commission on November 2, 1989. Species of fish, shellfish, and aquatic plants which pose a potential or realized threat to indigenous aquatic species and ecosystems are defined as harmful or potentially harmful and restricted from use except by permit under these rules.

A meeting was held, at the direction of the Texas Parks and Wildlife Commission, between Texas Parks and Wildlife Department staff and representatives of the Sierras Club, Texas Audubon Society, Sportsmen Conservationists of Texas, Texas A&M University, Texas Agricultural Extension Service, United States Soil Conservation Service, Texas Department of Agriculture, Texas aquaculture Association, Texas Black Bass Unlimited, Texas Association of Bass Clubs, aquarium industry, and concerned legislative offices for further comment and suggestions to the rules. Amendments to the rules adopted on November 2, 1989, are proposed in response to substantive input received at this meeting.

All species of the knifefishes (Family Gymnotidae) are removed from the list with the exception of Gymnotus carapo. The hybrid grass carp (Family Cyprinidae) Ctenopharyngodon idella x Aristichthys/Hypophthalmichtys nobilis is added to the list. Walleyes (Family Percidae) of the genus Stizostedion are added except Stizostedion vitreum and S. canadensis. All species of the Nile perch (Family, Centropomidae) genera Lates and Luciobarbus are added. Cynoscion parvinnipinnis, C. regulus, and C. xanthus drums (Family Sciaenidae) are included on the list. All species of the genus Astacopsis crayfishes (Family Astacidae) are added. The Ascliei clam (Family Corbiculidae) Corbicula fluminensis, giant ram's horn snail (Family Pilaidea) Marisa comuarietis, and zebra mussel (Family Dreissinidae) Dreissena polymorpha are added. Principal changes are made with establishment of an exotic species permit that would allow a person to possess, propagate, transport, or sell silver carp (Hypophthalmichtys molitrix, black carp/snail carp (Mylopharyngodon piceus), blue tilapia (Tilapia aurea), Mozambique tilapia (Tilapia mossambica), or hybrids between the two tilapia species provided by conditions of the permit of these rules.

The most conservative approach to the protection of wild stocks in the public waters of the state is the prohibition of all exotic species, but this is not practical. Prohibiting exotic species that are known to be harmful, or have a potential to be harmful to indigenous species provides reasonable protection while allowing the use and enjoyment of those that pose insignificant risk. Present rules are based on this latter approach. However, there is an inherent danger in an exclusion listing since not all exotic species and their ecology are known, and some of these individuals may need to be prohibited. It is for this reason that the use of all exotic species be minimized and use of indigenous species emphasized. Particularly, when exotic species are maintained in culture systems, every effort should be extended to use indigenous species that provide comparable services and products.

The impacts of an established exotic will range from benign to catastrophic and are usually irreversible. Because of the variable effect of exotic species, it remains the policy of the Texas Parks and Wildlife Commission to minimize the potential for establishment of exotic species in the public waters of the state. Any species of exotic fish, shellfish, and aquatic plant whose documented first occurrence in Texas public waters occurs after the effective date (December 11, 1989,) of the November 2, 1989, approved rules will be evaluated as to the potential or realized harm of the species and appropriate action will be taken by the commission as soon as practical.

Robin Riechers, staff economist, has determined that for the first five years the proposed sections are in effect there will be minimal fiscal implications for state and local government as a result of enforcing or administering the sections as the amended sections will not significantly affect current activities.

Mr. Riechers also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the protection of the state’s aquatic wildlife resources from introduction of exotic harmful or potentially harmful fish, shellfish, and aquatic plants.

There will be a minimal effect on small businesses as a result of enforcing the sections. The anticipated economic cost to individuals who are required to comply with the sections as amended is minimal.

Comments on this proposal may be submitted to Neil E. Carter, Director of Inland Fisheries, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, extension 4890 or (512) 389-4860.

The amendments are proposed under the Parks and Wildlife Code, §66.007 and §66.015 or the Agriculture Code, §134.020, which provides the department with the authority to regulate exotic harmful or potentially harmful fish, shellfish, and aquatic plants.

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

[Culture-The business of producing, propagating, transporting, possessing, and selling fish raised in a private pond.]

Cultured fish—Farm-raised fish or shellfish.

Exotic species—A nonindigenous species of fish, shellfish, or aquatic plant which is not normally found in public water.

Fish farm—The property including private ponds from which fish or shellfish are produced, propagated, transported, or sold.

Fish farmer—Any person engaged in fish farming.

Fish farming—The business of producing, propagating, transporting, possessing, and selling cultured fish raised in a private pond, but does not include the business of producing, propagating, transporting, possessing, and selling cultured fish propagated for bait purposes.
<table>
<thead>
<tr>
<th></th>
<th>Common Name</th>
<th>Family</th>
<th>Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Lampreys</td>
<td>Petromyzontidae</td>
<td>All Species except <em>Ichthyomyzon castaneus</em> and <em>I. gagei</em></td>
</tr>
<tr>
<td>2</td>
<td>Freshwater Stingrays</td>
<td>Potamotrygonidae</td>
<td>All Species</td>
</tr>
<tr>
<td>3</td>
<td>Arapaima</td>
<td>Osteoglossidae</td>
<td><em>Arapaima gigas</em></td>
</tr>
<tr>
<td>4</td>
<td>South American Pike Characoids</td>
<td>Characidae</td>
<td>All Species of genus <em>Acetrorhyncus</em></td>
</tr>
<tr>
<td>5</td>
<td>African Tiger Fishes</td>
<td>Hydrocyninae</td>
<td>All Species</td>
</tr>
<tr>
<td>6</td>
<td>Piranhas and Priambebus</td>
<td>Serrasalminae</td>
<td>All Species</td>
</tr>
<tr>
<td>7</td>
<td>Rhaphidodontid Characoids</td>
<td>Rhaphidontinae</td>
<td>All Species of genera <em>Hydrolycus</em> and <em>Rhaphiodon</em> (synonymous with <em>Cynodon</em>)</td>
</tr>
<tr>
<td>8</td>
<td>Dourados</td>
<td>Bryconinae</td>
<td>All Species of genus <em>Salminus</em></td>
</tr>
<tr>
<td>9</td>
<td>South American Tiger Fishes</td>
<td>Erythrinidae</td>
<td>All Species</td>
</tr>
</tbody>
</table>
(10) South American Pike Characoids  
Family: Ctenolucidae  
All Species of genera Ctenolucius and Luciocharax (synonymous with Boulengerella and Hydrocinus)

(11) African Pike Characoids  
Families: Hepsetidae Ichthyboridae  
All Species

(12) Knifefishes  
Family: Gymnotidae  
Gymnotus carapo  
[All Species]

(13) Electric eels  
Family: Electrophoridae  
Electrophorus electricus

(14) Carps and Minnows  
Family: Cyprinidae  
All Species of genera: Abramis, Aristichthys, Aspius, Aspiolucius, Blicca, Catla, Cirrhina, Ctenopharyngodon, Elopichthys, Hypophthalmichthys, Leuciscus, Megalobrama, Mylopharyngodon, Parabramis, Pseudaspius, Rutilus, Scardinius, Thynnichthys, Tor, and the species Barbus tor (Synonymous with Barbus hexagoniolepis) [Except grass carp hybrid (Ctenopharyngodon idella x Aristichthys/ Hypophthalmichthys nobilis)]

(15) Walking Catfishes  
Family: Claridae  
All Species

(16) Electric Catfishes  
Family: Malapteruridae  
All Species

(17) South American Parasitic Candiru Catfishes  
Subfamilies: Stegophilinae Vandelliinae  
All Species

(18) Pike Killifish  
Family: Poeciliidae  
Belonesox belizanus
(19) Marine Stonefishes  
Family: Synanceiidae  
All Species

(20) South American Pike Cichlids  
Family: Cichlidae  
All Species of genera Crenicichla and Batrachops

(21) Tilapia  
Family: Cichlidae  
All Species of genus Tilapia (including Sarotherodon and Oreochromis)

(22) Asian Pikeheads  
Family: Luciocephalidae  
All Species

(23) Snakeheads  
Family: Channidae  
All Species

(24) Walleyes  
Family: Percidae  
All Species of the genus Stizostedion except Stizostedion vitreum and S. canadense

(25) Nile perch  
Family: Centropomidae  
All Species of genera Lates and Lucioperca

(26) Drums  
Family: Sciaenidae  
Cynoscion parvipinnis, C. regalis, and C. xanthalus

Harmful or potentially harmful exotic shellfish—

(1) Crayfishes  
Family: Astacidae  
All species of the genus Astacopsis [gouldi]

(2) Mitten crabs  
Family: Grapsidae  
All species of genus Eriocheir

(3) Asian clam  
Family: Corbiculidae  
Corbicula fluminea

(4) Giant ram’s horn snail  
Family: Pilaidea  
Marisa cornuarietis

(5) Zebra mussel  
Family: Dreissenidae  
Dreissena polymorpha

Private pond—A pond, reservoir, vat, or other structure capable of holding cultured [species of] fish, shellfish, or aquatic plants in confinement wholly within or on the enclosed land of an owner, lessee, or licensee.

§57.112. General Rules (Provision).

(a) Scientific reclassification or change in nomenclature of taxa at any level in the taxonomic hierarchy will not, in and of itself, result in redefinition of a harmful or potentially harmful exotic species.

(b) Except as provided in §57.113 of this title (relating to Exceptions) [by] these rules, it is an offense for any person to release into public waters, import, sell, purchase, propagate, or possess any species, hybrid of a [among] species, subspecies, eggs, seeds, or any [reproductive] part of any species defined as harmful or potentially harmful exotic fish, shellfish, or aquatic plant.

§57.113. Exceptions.

(a) A person may possess harmful or potentially harmful exotic fishes if that person has documented evidence that the person possessed those fish prior to July 2, 1974.

(b)(c) A person who holds a valid scientific or zoological permit issued by the department may possess the exotic harmful or potentially harmful fish, shellfish, and aquatic plants as authorized in the permit.

(b)(d) A person who is licensed as a fish farmer who also holds an exotic species [a Texas tilapia] permit issued by the de-
partment may possess, propagate, transport, or sell [and culture] silver carp, (Hypophthalmichthys molitrix), black carp (Mylopharyngodon piceus, also commonly known as small carp), blue tilapia (tilapia aurea), Mozambique tilapia (tilapia mossambica), or [and] hybrids between the two tilapia species as provided by conditions of the permit and [in] these rules.

(d) A person may possess Mozambique tilapia in a private pond subject to compliance with §57.115(d) of this title (relating to Exotic Species Transport Invoice).

(e) Except as provided in subsection (f) of this section, live blue and Mozambique tilapia and the hybrids of these two species may be sold only by a Texas tilapia permit holder.

(f) A licensed retail or wholesale fish dealer is not required to have an exotic species [a Texas tilapia] permit to purchase, sell, or possess live silver carp, black carp, blue tilapia, Mozambique tilapia, or hybrids between these [the] two tilapia species, held in the place of business as defined in the Parks and Wildlife Code, §47.001(9), unless the retail or wholesale fish dealer propagates [cultures] one or more of these species. However, such a dealer may sell or deliver these species to another person only if the intestines of the fish are removed or the fish is dead and packaged on ice.

(g) A person may possess tilapia [Tilapia], silver carp, and black carp [may not be] delivered as authorized in subsection (e) of this section [to the final consumer unless] if such fish are dead [with the intestines removed or] and packaged on ice, except Mozambique tilapia may be sold live as forage for stockin private ponds.

(g) A person may possess the hybrid grass carp (Ctenopharyngodon idella x Aristichthys/Hypophthalmichthys nobilis) if that person has documented evidence of possession prior to January 26, 1960, has provided such evidence to the department by May 1, 1990, and possesses acknowledgment of such evidence from the department by June 1, 1990. A person in possession of hybrid grass carp on January 25, 1990, shall not replace or supplement hybrid grass carp. This subsection shall be in effect only until January 1, 1991.

§57.114. Transportation of Live Exotic Species [Tilapia].

(a) Transport of live harmful or potentially harmful exotic species [tilapia] is permitted by a licensed fish farmer who has in his immediate possession a valid exotic species [Texas tilapia] permit, by a commercial shipper acting for the permittee, or when transported between a warehouse and retail outlet within a company possessing a retail fish dealers license, and persons holding a valid zoological or scientific permit authorizing the transportation.

(b) Any person transporting live harmful or potentially harmful exotic species [tilapia] must have an exotic species [Texas tilapia] transport invoice; except harmful or potentially harmful exotic species [Texas tilapia] covered under zoological or scientific permits may be transported in compliance with [under] rules governing zoological or scientific permits.

(c) All motor vehicles, trailers, or semitrailers transporting live tilapia for commercial purposes shall exhibit the inscription "Tilapia" on the right, left, and rear sides of the vehicle. The inscription shall read from left to right and be plainly visible at all times while transporting live tilapia. The inscription "Tilapia" shall be attached to or painted on the vehicle, trailer, or semitrailer in letters of good proportion in contrasting color to the background and be at least eight inches in height.


(a) An exotic species [A Texas Tilapia] transport invoice shall contain all the following information correctly stated and legibly written: invoice number; date of shipment; name, address, and phone number of the shipper; name, address, and phone number of the receiver; Texas fish farmers license number and exotic species [Texas tilapia] permit number, if applicable; number and total weight of each harmful or potentially harmful exotic species [tilapia] by species; a check mark indicating interstate import, interstate export, or intrastate type of shipment. A completed invoice must accompany each shipment of harmful or potentially harmful exotic species [tilapia], and must be sequentially numbered during the permit period; no invoice number shall be used twice or more during any one permit period by the permittee.

(b) The exotic species [Texas tilapia] transport invoice must be provided by the permittee; one copy shall be retained by the permittee for a period of at least one year following the shipping date.

(c) The permittee is responsible for supplying copies of the exotic species [Texas tilapia] transport invoice to out-of-state dealers from which the permittee has ordered harmful or potentially harmful exotic species [tilapia] so that shipment will be properly marked and numbered upon delivery to the permittee in Texas.

(d) Owners, or their agents, of private ponds [waters] stocked with Mozambique tilapia by an exotic species [Texas tilapia] permit holder must retain a copy of the exotic species [Texas tilapia] transport invoice for a period of one year after the stocking date or as long as the tilapia are in the water, whichever is longer.

§57.116. Exotic Species Permit [Texas Tilapia].

(a) The director may issue an exotic species [a Texas tilapia] permit only to a licensed fish farmer for one or more species listed in §57.113(c) of this title (relating to Exceptions) [commercial production] if he finds that the following requirements are met:

(1) The fish farm [Culture facilities] is [must be] designed to prevent discharge of water containing adult or juvenile harmful or potentially harmful exotic species [tilapia] or their eggs from the permittee's property.

(2) Fish farms [Facilities] containing silver carp, black carp, blue tilapia, or hybrids between blue and Mozambique tilapia which are within the 100-year flood plain, referred to as Zone A on the National Flood Insurance Program Flood Insurance Rate Map, are enclosed within an earthen or concrete dike or levee [raised to an elevation of at least one foot above 100 year flood elevation. This dike shall be] constructed in such a manner to exclude all flood waters and such that no section of the crest of the dike or levee is less than one foot above the 100 year flood elevation. Dike design or construction must be approved by the department before issuance of a permit.

(3) The applicant may receive an exotic species permit if he or she has not violated any provision of these rules during the one-year period preceding the date of application.

(b) To be considered for an exotic species [a Texas tilapia] permit, the applicant must:

(1) complete an initial exotic species [a Texas tilapia] permit application;

(2) submit this application to the department;

(3) possess a valid Texas Fish Farmer's License and;

(4) demonstrate to the department [department's satisfaction] that an existing fish farm [culture facility] meets specifications described in §57.117 of this title (relating to Exotic Species Permit; Expiration and Renewal), or present plans for fish farms [facilities] in planning or construction that will meet these specifications. Failure to conform to construction plans and standards shall constitute grounds for permit revocation, unless such non-conformity is specifically approved in writing by the department.

(c) Permits must be made available to authorized department personnel
[f] If a permittee terminates tilapia production, the permittee shall lawfully remove or destroy all remaining tilapia.

[g] Texas tilapia permits are not required for holders of zoological or scientific permits who do not commercially propagate tilapia or for commercial shippers.

[b] An applicant for a permit must agree to provide documentation necessary to identify tilapia.

§57.118. Reports.

[a] Holders of harmful or potentially harmful exotic fish permits issued prior to January 1, 1974, may retain those fish in their possession on that date and thereafter. The permit holder must submit an annual report on a form provided by the department. The department will then issue a new permit, renewable annually, only for those live fish legally possessed under the current permit.

[b] The exotic species [Texas tilapia] permit holder must submit an annual report that accounts for importation, possession, transport, sale, or other disposition of any harmful or potentially harmful exotic species handled by the permit holder on a form provided by the department with the application for renewal or within 30 days after termination of the exotic species permit.

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

Issued in Austin, Texas, on December 19, 1989.

TRD-8912163
Boyd M. Johnson
General Counsel
Texas Parks and Wildlife Department

Earliest possible date of adoption: January 22, 1990

For further information, please call: 1-800-792-1112, or (512) 389-4641

Chapter 65. Wildlife
Subchapter C. Trapping and Transporting Live Game Animals and Game Birds

• 31 TAC §§65.121-65.123

(ApplicationContext)

Robin Riechers, staff economist, has determined that for the first five-year period the repeals are in effect there will be minimal fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Riechers also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to permit new sections to be adopted that are more encompassing concerning stocking of wildlife resources. The effect on small businesses as a result of enforcing the sections will be minimal. The anticipated economic cost to persons who are required to comply with the repeals as proposed will be minimal.

Comments on the proposed repeals may be submitted to Phil Evans, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, or (512) 389-4974.

The repeals are proposed under the Texas Parks and Wildlife Code, §§110.011, 12.013, 43.021-43.030, and 63.007, which permits the commission to regulate trapping and transporting of wildlife.

§65.122. Exception.

§65.123. Effective Date.

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

Issued in Austin, Texas, on December 19, 1989.

TRD-8912163
Boyd M. Johnson
General Counsel
Texas Parks and Wildlife Department

Earliest possible date of adoption: January 26, 1990

For further information, please call: (512) 389-4641

TITLE 37. PUBLIC SAFETY AND CORRECTIONS
Part IV. Texas Department of Criminal Justice
Chapter 152. General Allocation Provisions

• 37 TAC §§152.1-152.3

The Texas Board of Criminal Justice proposes new §§152.1-152.3, concerning the allocation among the counties of the number of Institutional Division admissions available. The proposed allocation formula is required by the enactment of House Bill 2335, §3.06, 71st Legislature, which created Texas Civil Statutes, Article 6166a-4. The statute creates six statutory factors which must be consid-
§152.1. Purpose. Texas Civil Statutes, Article 6166a-4, requires the board to adopt an allocation formula to fairly and equitably allocate to each county the Available Institutional Division admissions until sufficient capacity is available in the Institutional Division to accept all prisoners ready for transport to the Institutional Division.

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

Available institutional division admissions—The total number of beds available within the Institutional Division for intake of prisoners, minus .03333 of those beds which is adequate to allow the Institutional Division to expeditiously receive from the counties any new prisoners who are sentenced to death, or are recaptured escapees, pre-parole violators, Institutional Division prisoners returning from county bench warrants, interstate corrections compact transfers, and out-of-state parole violators.

§152.3. Allocation Formula.

(a) In creating the allocation formula, the board is required to consider and weigh each of the following factors:

(1) the percentage of prison admissions for the entire state that were used by the county or counties in the preceding 12 months;

(2) the percentage of the state’s violent index crime that occurred in the county or counties in the preceding 12 months;

(3) the percentage of the state’s total index crime that occurred in the county or counties in the preceding 12 months;

(4) the percentage of the state’s total arrests under the Texas Controlled Substances Act (Texas Civil Statutes, Article 4476-15) that occurred in the county or counties in the preceding 12 months;

(5) the percentage of the state’s population residing in the county or counties; and

(6) the percentage of the state’s total unemployment in the county or counties.

(b) The board assigns the following weight to each statutory factor.

(1) §152.03(a)(1)–17%.
(2) §152.03(a)(2)–17%.
(3) §152.03(a)(3)–17%.
(4) §152.03(a)(4)–17%.
(5) §152.03(a)(5)–17%.
(6) §152.03(a)(6)–15%.

(c) These weighted statutory factors shall be applied to Available Institutional Division admissions to determine the number of admissions available to each county on a weekly basis.

(d) Based upon an estimated 36,250 Available Institutional Division admissions annually, this formula produces the following number of new prisoner admissions which the Institutional Division would accept weekly from each county.

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14 TexReg 6868   December, 26, 1989   Texas Register
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Normal rounding practices will be employed regarding fractional figures.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Huntsville, Texas on December 14, 1989.

TRD-8912126
Michael R. Davis
Assistant General Counsel
Texas Department of Criminal Justice, Institutional Division

Earliest possible date of adoption: January 26, 1990

For further information, please call: (409) 294-6700

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part VI. Texas Commission for the Deaf

Chapter 183. Board for Evaluation of Interpreters and Interpreter Certification

Subchapter G. Fees

• 40 TAC §183.103

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

The Texas Commission for the Deaf (TCD) proposes the repeal of §183.103, concerning fees for the Board for Evaluation of Interpreters (BEI) certification and recertification. The repealed section would be replaced by a new section which is proposed and published elsewhere in this issue of the Texas Register.

The repeal is proposed to increase charges in an amount sufficient to recover the costs of the certification program.

Larry D. Evans, TCD executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Evans also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to clarify for the public the recertification procedure for the certified interpreters. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to William F. Eckstein, Assistant Director, P.O. Box 12904, Austin, Texas 78711-2904, within 60 days after the date of this publication.

The repeal is proposed under the Human Resources Code, §§1.006(b)(3) and 61.007(e), which provides the Texas Commission for the Deaf with the authority to promulgate necessary rules for the BEI certification and recertification program.

§183.101. Fees.

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

Issued in Austin, Texas, on December 18, 1989.

TRD-8912133
Larry D. Evans
Executive Director
Texas Commission for the Deaf

Proposed date of adoption: February 24, 1990

For further information, please call: (512) 469-9891

The Texas Commission for the Deaf (TCD) proposes new §183.103, concerning fees for the Board for Evaluation of Interpreters (BEI) certification and recertification. The BEI shall charge an amount sufficient to recover the costs of the Certification Program. The section conforms with new provisions of the Human Resources Code, §§1.007, enacted by the 70th Legislature, 1987.

Larry D. Evans, TCD executive director, has determined that for the first five-year period the section will be in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect is an estimated additional cost of $20,000 for each year from 1989 to 1994. There will be no effect on local government.

Mr. Evans also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance of continued quality of interpreter services by the commission through the BEI Certification Program. There will be no effect on small businesses as a result of enforcing the section. The anticipated economic cost to persons who are required to comply with the sections as proposed will be fees paid by certified interpreters and certification applications, totaling $20,000 each year for the first five-year period to recover the costs of the certification program.

Comments on the proposal may be submitted to William F. Eckstein, Assistant Director, P.O. Box 12904, Austin, Texas 78711, within 60 days after the date of this publication.

The new section is proposed under the Human Resources Code, §§1.006(b)(3) and 61.007(e), which provides the Texas Commission for the Deaf with the authority to promulgate necessary rules and to establish fees for the BEI Certification Program.

§183.103. Fees. The commission shall charge the following fees.
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Part IX. Texas Department on Aging
Chapter 255. Funding Allocation Formula for Retired Senior Volunteer Projects

Statutes and Regulations
- 40 TAC §255.39

(Editor's Note: The Texas Department on Aging proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Department on Aging proposes new §255.39, concerning funding allocation formula for Retired Senior Volunteer Projects (RSVP) in Texas. The Texas Board on Aging adopted a funding formula for the distribution of additional state revenue as a result of action by the 71st Legislature and the board on December 14, 1989.

Charles Hubbard, fiscal officer, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enacting or administering the section.

Alex Guerra, director of programs, Texas Department on Aging has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enacting the section will be increased delivery of services as a result of increased funding. There will be no effect on small businesses as a result of enacting the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Edwin R. Floyd, Program Liaison, Program Operations Division, Texas Department on Aging, P.O. Box 12766, Austin, Texas 78711.

The new section is proposed under the Human Resources Code, §202, which provides the Texas Department on Aging with the authority to promulgate rules governing the oper-
oration of the department.

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

Issued in Austin, Texas, on December 19, 1989.

TRID-8912155 O. P. (Bob) Bobbitt
Executive Director
Texas Department on Aging

Earliest possible date of adoption: January 26, 1990

For further information, please call: (512) 444-2727

◆ ◆ ◆
Name: Lindsay Dayton
Grade: 7
School: Clear Lake Intermediate, Clear Creek

Name: Vincent Gonzales
Grade: 7
School: Clear Lake Intermediate, Clear Creek
Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the Texas Register. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the Texas Register, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the Texas Register.

TITLE 25. HEALTH SERVICES
Part I. Texas Department of Health
Chapter 241. Shellfish Sanitation
Texas Crab Meat
• 25 TAC §241.3

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed new §241.3 which appeared in the August 22, 1989, issue of the Texas Register (14 TexReg 4207). The effective date of this withdrawal is December 19, 1989.

Issued in Austin, Texas, on December 19, 1989
TRD-8912139 Dan LaFleur
Liaison Officer
Texas Department of Health

Effective date: December 19, 1989
For further information, please call: (512) 458-7296

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part IX. Texas Department on Aging
Chapter 255. Funding Allocation Formula for Retired Senior Volunteer Projects

Statutes and Regulations
• 40 TAC §255.39

The Texas Department on Aging has withdrawn from consideration for permanent adoption a proposed new §255.39 which appeared in the October 10, 1989, issue of the Texas Register (14 TexReg 5413). The effective date of this withdrawal is December 19, 1989.

Issued in Austin, Texas, on December 19, 1989
TRD-8912157 Edwin R. Floyd
Program Liaison
Texas Department on Aging

Effective date: December 19, 1989
For further information, please call: (512) 444-2727

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* Withdrawn Sections December 26, 1989 14 TexReg 6883
Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the Texas Register. The section becomes effective 20 days after the agency files the correct document with the Texas Register, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on a shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 16. ECONOMIC REGULATION
Part I. Railroad Commission of Texas
Chapter 5. Transportation Division
Subchapter Z. Base Rates, Deviations and Suspensions
• 16 TAC §5.582

The Railroad Commission of Texas adopts an amendment to §5.582, without changes to the proposed text as published in the November 7, 1989, issue of the Texas Register (14 TexReg 5826).

The amendment is adopted because it has been determined that the deviation process is not now appropriate for sand and gravel carriers. There have been no deviations filed under the rules as originally adopted.

The amendment removes the provisions contained in former subsection (g) which allowed deviations of ten percent below the minimum tariff rate on certain shipments by specialized motor carriers of sand and gravel commodities. The sand and gravel carriers will be required to file applications for specific items in order to charge rates below the minimum tariff rate in item 411.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorize the commission to regulate motor carriers in all matters.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Issued in Austin, Texas, on December 18, 1989.

TRD-8912129 Kent Hance Chairman Railroad Commission of Texas

Effective date: January 8, 1990
Proposal publication date: November 7, 1989
For further information, please call: (512) 463-7094

TITLE 25. HEALTH SERVICES
Part I. Texas Department of Health
Chapter 115. Home Health Care Agencies

Licensing and Regulation
• 25 TAC §§115.2, 115.5, 115.8-115.10, and 115.12

The Texas Department of Health adopts amendments to §§115.2, 115.5, 115.8-115.10, and 115.12. Sections 115.8, 115.9, and 115.12 are adopted without changes to the proposed text as published in the September 26, 1989 issue of the Texas Register (14 TexReg 5018). Sections 115.2 and 115.5 are adopted without change and will not be republished. The department will adopt the proposed amendment to §115.15 and new §115.19 at a later date.

The amendments implement the provisions of House Bill 1466, House Bill 2117 and Senate Bill 332, 71st Legislature, 1989. The amendments incorporate statutory language in the definitions and the application and issuance of temporary license sections. The amendments require agencies to comply with state law concerning criminal history checks and provide clarification regarding the department’s action to deny, suspend, or revoke an agency’s license.

The following is a summary of changes the department made during the comment period.

Concerning §115.8, Conditions of Annual License, in subsection (i) the citation to Chapter 106 was changed to the correct citation: §75.1001. To clarify how the agency would demonstrate compliance with the criminal history checks, the department added language stating the agency is to maintain documentation to show compliance with criminal history checks of applicants.

Concerning §115.9, Standards for a Class A License, an editorial change was made in subsection (a) to reference the new citation of 42 Code of Federal Regulations Part 494.

Concerning §115.12, License Denial, Suspension, or Revocation, in subsection (b)(3), the citation to Chapter 106 was changed to the correct citation: §75.1001.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Health and Safety Code, §142.012, which provides the Board of Health with authority to adopt rules concerning home health agencies; and the Health and Safety Code, §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the commissioner of health.

§115.8. Conditions of Annual License.

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

(i) A Class A or Class B home health agency shall comply with Human Resources Code, Title 6, Chapter 106, requiring criminal conviction checks of certain home health agency employees, and the rules adopted by the Texas Department of Human Services under 40 TAC §75.1001 et seq. Documentation shall be maintained by the agency to show compliance with criminal history checks of applicants.

§115.9. Standards for a Class A License. A Class A agency shall meet the conditions of participation as either a home health agency or a hospice in the insurance program for the aged within the meaning of the Social Security Act and the regulations adopted thereunder (42 Code of Federal Regulations Part 484 or §418.1 et seq.), which regulations are adopted by reference herein for all purposes. Copies of the regulations adopted by reference in this section are indexed and filed in the Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

§115.10. Standards for a Class B License.

(a) (No change.)

(b) Organizational structure and operational policies of the agency must be clearly stated in writing. It must include the lines of authority and delegation of responsibility down to the patient care level and the services provided.

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

(3) A personnel record shall be maintained on each employee. A personnel record should include, as appropriate, the following: job description; qualifications; application for employment; verification of references, job experience, educational requirements, license and permits; performance evaluations; and disciplinary actions or letters of commendation. All information...
should be kept current. In lieu of the job description and qualifications for employment, the personnel record may include a statement signed by the employee that the employee has read the job description and qualifications for the position accepted. The original personnel record must be maintained in the parent agency.

(4)-(5) (No change.)

(c) The agency shall maintain a current roster of patients and have clinical records for each patient which is maintained according to professional standards.

(1) A clinical record shall contain, as applicable, appropriate identifying information: name of practitioner; treatment plan which shall include medication, diet, treatment and activity orders; initial assessment and patient care plan; clinical and progress notes (clinical notes are written the day service is rendered and incorporated no less often than weekly); medication sheet; medication administration records (if applicable); record of patient care conference; record of supervisory visits; written statements regarding consumer complaints; acknowledgement of receipt of a copy of the Texas Age Standards for Medium Security Institutions; Rights of the Elderly (as applicable); patient request for and acknowledgment of home health medications; and discharge summary. All entries shall be signed and dated by the person making the entry and/or supervisory personnel as necessary.

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

(d)-(g) (No change.)

(h) Medications will be administered by an agency-employed registered nurse; a licensed vocational nurse, an individual who holds a current permit issued under §115.19 of this title (relating to Home Health Medication Aides) and acts under the delegated authority of a person who holds a current license under state law which authorizes the licensee to administer medications; or an individual who performs duties as a qualified dialysis technician under §115.18 (relating to Standards for Home Dialysis Designation). Administration of such medication must be ordered by the patient’s practitioner. The practitioner’s orders must state that medications may be administered by a home health medication aide.

(1) (No change.)

(2) Upon the request by a patient and/or his family for administration of medications by a home health medication aide, the registered nurse may assign a home health medication aide to administer medications.

(3) The clinical records of a patient utilizing a home health medication aide shall include the following documentation:

(A) a request signed by the patient and/or family for assignment of a home health medication aide; and

(B) a statement signed by the patient and/or family acknowledging receipt of the list of permitted and prohibited acts of a home health medication aide.

(4) A current medication sheet and medication administration records will be maintained and will be incorporated into the clinical record. The supervising registered nurse shall prepare an assignment sheet for each home health medication aide. Notation will be made in clinical notes of medications not given and the reason. Any untoward action will be reported to a supervisor and documented.

(i) An agency shall provide at least one home health service. All services shall be rendered and supervised by qualified personnel.

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

(9) If home health medication aide services are provided, a home health medication aide shall be employed by the agency to provide home health medication aide services; and a registered nurse shall be employed by or under contract with the agency to perform the initial assessment; prepare the patient care plan; establish the medication sheet, medication record and medication aide assignment sheet; and supervise the home health medication aide. The registered nurse shall supervise the home health medication aide on-site at least once every 14 days and more frequently if the patient’s condition and medication changes.

§115.12. License, Denial, Suspension, or Revocation.

(a) (No change.)

(b) The department may also take action under subsection (a) of this section:

(1) if a Class A agency’s provider agreement under Title XVIII of the Social Security Act has been terminated by the certifying body, Health Care Financing Administration, or if the agency withdraws its certification or its request for certification, the department may suspend or revoke the license of a Class A home health agency that fails to maintain its certification qualifying the agency as a certified agency. A Class A home health agency that submits a request for a hearing as provided by this section is governed by the requirements of the statute and this chapter relating to a Class B home health agency until suspension or revocation is finally determined by the department or, if the license is suspended or revoked, until the last day for seeking review of the department order or a later date fixed by order of the reviewing court;

(2) for fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the agency pursuant to this chapter; or

(3) if the agency fails to comply with Title 6, Chapter 106, Human Resources Code, and the rules adopted by the Texas Department of Human Services under 40 TAC §75.1001 et seq.

(c) The department may suspend or revoke an existing valid license or existing home health medication aide permit, disqualify a person from receiving a license or a home health medication aide permit, or deny to a person the opportunity to be examined for a permit because of a person’s conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.

(1) In determining whether a criminal conviction directly relates to the license or the home health medication aide permit, the department shall consider:

(A) (No change.)

(B) the relationship of the crime to the purposes for requiring a license or permit to engage in the occupation. The following felonies and misdemeanors relate to the licensing of an agency or the permitting of a home health medication aide because these criminal offenses indicate an inability or a tendency to be unable to own or operate an agency or to perform as a home health medication aide:

(i) the misdemeanor of knowingly or intentionally acting as an agency or as a home health medication aide without an appropriate license or permit issued under the statute;

(ii) a misdemeanor and/or felony offense involving moral turpitude;

(iii) a misdemeanor and/or felony offense under various titles of the Texas Penal Code:

(I) Title 5 concerning offenses against the person;

(II) Title 7 concerning offenses against property;

(III) Title 9 concerning offenses against public order and decency;

(IV) Title 10 concerning offenses against public health, safety, and morals; and

(V) Title 4 concerning offenses of attempting or conspiring to

14 TexReg 6886 December 26, 1989 Texas Register •
commit any of the offenses in clauses (i)-(iii) of this subparagraph:

(iv) the misdemeanors and felonies listed in clauses (i)-(iii) of this subparagraph. The misdemeanors and felonies are not inclusive in that the department may consider other particular crimes in special cases in order to promote the intent of the statute and this chapter;

(C) the extent to which a license or permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of an agency or the home health medication aide.

(2) (No change.)

(3) If the department denies, suspends, or revokes a license or permit under this section, the director or the program administrator of the Home Health Medication Aide Permit Program, as appropriate, shall give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas, for review of the evidence presented to the department and its decision;

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the department’s action is final and appealable; and

(D) of the earliest date that the person may appeal.

(d) Upon a licensee’s or permit holder’s felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his license or permit shall be revoked.

(e) If the director proposes to deny, suspend, or revoke a license or the program administrator for the Home Health Medication Aide Permit Program proposes to deny, suspend or revoke a home health medication aide permit or to rescind a home health medication aide program approval, the director shall notify the agency and the program administrator shall notify the permit holder or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offer the agency, permit holder, or home health medication aide program an opportunity for a hearing.

(1) The agency, permit holder, or home health medication aide program must request a hearing within 30 days of receipt of the notice.

(2) The request for home health licensure hearing must be in writing and submitted to the Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. The request for a home health medication aide permit or a home health medication aide program hearing must be in writing and submitted to the program administrator, Home Health Medication Aide Permit Program, Professional Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(3) A hearing shall be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252–13a, and §§1.21–1.34 of this title (relating to Formal Hearing Procedures).

(4) If the agency, permit holder, or home health medication aide program does not request a hearing, in writing, within 30 days of receipt of the notice, the agency, permit holder or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(f)–(j) (No change.)

(j) If the department suspends a license or home health medication aide permit, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. The authorized representative of the department shall investigate prior to making a determination.

(1) During the time of suspension, the suspended license or permit holder shall return his or her license or permit to the department.

(2) If a suspension overlaps a renewal date, the suspended license or permit holder may comply with the renewal procedures in this chapter; however, the department may not renew the license or permit until the department determines that the reason for suspension no longer exists.

(k) If the department revokes or does not renew a license or permit, a person may reapply for a license or permit by complying with the requirements and procedures in this chapter at the time of reapplication.

(1) The department may refuse to issue a license or permit if the reason for revocation or nonrenewal continues to exist.

(2) Upon revocation or nonrenewal, a license or permit holder shall return the license or permit to the department.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Issued in Austin, Texas, on December 20, 1989.

TRD-8912002
Texas Department of Health
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: January 10, 1990.

Proposal publication date: September 26, 1989.

For further information, please call: (512) 458-7245

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
Chapter 29. Purchased Health Services
Subchapter B. Medicaid Eyeglass Program

The Texas Department of Human Services (DHS) adopts an amendment to §29.101 and adopts new §29.105, with changes to the proposed text as published in the November 17, 1989, issue of the Texas Register (14 TexReg 6069).

Section 29.101 is amended to specify that the services listed in new §29.105 are not limited to recipients who are 21 years of age or older. New §29.105 adds certain diagnostic services provided by optometrists as covered services of the Texas Medical Assistance Program.

The amendment and new section will function by improving client access to services because of an expanded provider base.

No comments were received regarding adoption of the amendment and new section; however, DHS is correcting the title of §29.105, referenced in the first sentence of §29.101, to Optometrist Services.

40 TAC §29.101

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§29.101. Benefits and Limitations. Except as specified in §29.105 of this title (relating to Optometrist Services), the services addressed in this subchapter are those optometric services available to Medicaid recipients who are 21 years old or older. Services are available to Medicaid recipients under 21 years old through the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program. The amount,
duration, and scope of optometric services available through the Texas Medical Assistance Program are established according to applicable federal regulations, the Texas state plan for medical assistance under Title XIX of the Social Security Act, state law, and department rules. Information regarding benefits and limitations is available to providers of these services through the Medicaid Provider Procedures Manual which is issued to each provider on enrolling in the Medicaid Program. The benefits and limitations applicable to optometric services available through the Medicaid Program to Medicaid recipients who are 21 years old or older are as follows:

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 20, 1989.

TRD-8912178
Cathy Rossberg
Agncy Liaison, Policy
Communication Services
Texas Department of
Human Services

Effective date: March 1, 1990.
Proposal publication date: November 17, 1989.
For further information, please call: (512) 450-3765

• 40 TAC §33.402
The Texas Department of Human Services (DHS) adopts an amendment to §33.402, without changes to the proposed text as published in the November 17, 1989, issue of the Texas Register (14 TexReg 6071).

Section 33.402 is amended to specify that the services listed in §29.105 of DHS's Purchased Health Services rule chapter are not limited to recipients who are under age 21. In this issue of the Texas Register, DHS is adopting new §29.105 concerning optometrist services.

The section will function by clarifying that optometrist services are available in addition to the benefits listed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 20, 1989.

TRD-8912180
Cathy Rossberg
Agency Liaison, Policy
Communication Services
Texas Department of
Human Services

Effective date: March 1, 1990.
Proposal publication date: November 17, 1989.
For further information, please call: (512) 450-3765

• Part VI. Texas Commission for the Deaf
Chapter 183. Board for Evaluation of Interpreters and Interpreter Certification
Subchapter E. Recertification Procedures
• 40 TAC §183.75
The Texas Commission for the Deaf (TCD) adopts the rule §183.75 without changes to the proposed text as published in the August 25, 1389, issue of the Texas Register (14 TexReg 4300).

The repeal of this section allows the adoption of new §183.75, concerning recertification procedures to clarify minimum recertification requirements in which TCD certified interpreters are required to validate and maintain their certificate after the conclusion of the last five-year certification period. The new section is published elsewhere in this issue of the Texas Register.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §§181.006(b)(3) and §181.007(c), which provides the Texas Commission for the Deaf with the authority to promulgate necessary rules for the BEI certification and recertification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 18, 1989.

TRD-8912195
Larry D. Evans
Executive Director
Texas Commission for the Deaf

Effective date: January 9, 1990
Proposal publication date: August 25, 1989
For further information, please call: (512) 469-9891

• 40 TAC §183.75
The Texas Commission for the Deaf (TCD) adopts new §183.75, with changes to the proposed text as published in the August 25, 1989, issue of the Texas Register (14 TexReg 4300). The new section is necessary to clarify minimum recertification requirements in which TCD certified interpreters are required to validate and maintain their certificate after the conclusion of the last five-year certification period.

Two comments were received in favor of removing consumer letters as a requirement for recertification.

Three commenters felt that Level I certificate holders should be allowed to recertify by submission of documentation on activity in the field of interpreting and attendance to workshops. The commission disagrees and maintains that the Level I certificate holders are required to take an evaluation for recertification for assurance of quality and skill. The requirement remains as proposed.

Regarding §183.75(3)(A) one commenter suggested that both (i) and (ii) should be used as evidence of activity in the field, as opposed to giving a choice. The commission decides that the requirement remains as proposed.

Regarding §183.75(3)(A)(iii) one commenter suggested that five different evaluation assignments be required instead of eight assignments. The commission agrees and modifications have been made accordingly.

Regarding §183.75(3)(B) one commenter suggested that a combination of both academic credit and workshop experience be accepted. The commission agrees with this comment and has added the new language to the subparagraph.

Regarding §183.75(3)(B) the Board for Evaluation of Interpreters (BEI) and (BEI) Subcommittee suggested that clauses pertaining to a number of continuing education units be eliminated. No definition and requirements of continuing education were provided in the rules concerning recertification at this time. The commission agrees with this comment and has made appropriate changes.

14 TexReg 6888 December 26, 1989 Texas Register
BEI Subcommittee commented on §183.75, concerning retroactive approval and suggested that expiration be extended till November 1, 1990. The commission agrees and has made the necessary modifications accordingly.

Comments received were from individuals only, rather than groups and associations.

The new section is adopted under the Human Resources Code, §§106(b)(3) and §101.007, which provides the Texas Commission for the Deaf with the authority to promulgate necessary rules for BEI operations and interpreter certification program.

§183.75. Recertification Procedures. The Texas Commission for the Deaf interpreter certificates shall be valid for a five-year period provided maintenance requirements are met. At least 90 days prior to the conclusion of the five-year period, the certificate holder shall be notified by mail of the termination date of certificate. Within 30 days after the termination date of certificate, the certificate holder must meet the requirements for recertification. The TCD certification awarded through recertification shall be valid for a five-year period, provided maintenance requirements are met. The board has established the following evaluation and experience requirements and procedures for recertification.

1. Application. The certificate holder shall submit either an application for evaluation or application for recertification and the appropriate fees.

2. Evaluation. A certificate holder applying for recertification by direct evaluation of skills or whose certificate has been reciprocated by the commission and the reciprocating certificate has expired, or who holds a Level I certificate which has expired, must take an evaluation within one year of recertification application date. The tests for Level I, Level III, Level IV, or Level V will be given to the applicant requesting a specific level of test and will be administered and scored by the board. The applicant will not be permitted to take a test given by the board at a lesser level than the applicant's current certificate level. The applicant may receive certification at the appropriate level depending upon test performance results.

3. Experience requirements. In lieu of evaluation for recertification, a certificate holder who is certified at Level II, Level III, Level IV, or Level V shall submit to the board documentation or evidence of both subparagraphs (A) and (B) of this paragraph which indicates professional activity and education within the last five-year certification period. The applicant may receive certification at the appropriate certification level depending upon review of paperwork submitted and approved by the board.

(A) The applicant shall select one of the following:

(i) documentation of service for two or more years on the board of or employed by an organization or agency dealing with some aspect of deafness;

(ii) documentation of one-year employment in the profession of interpreting; or

(iii) documentation showing services as an evaluator for the BEI, RID, or TSID on five different evaluation assignments.

(B) The applicant shall select one of the following:

(i) completion of at least 10 hours of workshops or training for Level II and Level III; or 20 hours of workshops, training, or instruction for Level IV and Level V in any professional or disciplinary training that is related to professional ethics, field of interpreting, and standards of practice;

(ii) completion of the equivalent of three credit hours in college courses or instruction for Level II and Level III; or six credit hours in college courses for Level IV and Level V in any professional or disciplinary training that is related to professional ethics, field of interpreting, and standards of practice; or

(iii) a combination of clauses (i) and (ii) of this subparagraph which will allow Levels IV and V to submit documentation of 10 hours of workshops and three college credits as a combination option.

4. Retroactive approval. Recertification applications which are submitted after September 1, 1987 will be allowed to recertify under this section and will be retroactively approved upon receipt of application, fees, and required paperwork for consideration of recertification awards. The allowance for retroactive approval will expire November 1, 1990.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 18, 1989.

TRD-8912136 Larry D. Evans
Executive Director
Texas Commission for the Deaf

Effective date: January 9, 1990
Proposal publication date: August 25, 1989
For further information, please call: (512) 469-9891

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State Board of Insurance Exempt Filing

The State Board of Insurance in an open meeting on December 12, 1989, adopted an amendment to Article VI of the by-laws of the Texas workers' compensation assigned risk pool as related to audits of the assigned risk pool.

The amended by-laws require that audits be conducted annually of the assigned risk pool's accounts as well as a management audit as specified by the board.


The board adopted the amendment to Article VI of the by-laws under the authority and jurisdiction of the Insurance Code, Articles 5.55-5.68-1, 5.76, and 5.96, and on an emergency basis as provided in Article 5.96(i).

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 19, 1989.

TRD-8912171 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: January 1, 1990
Proposal publication date: May 1, 1990
For further information, please call: (512) 463-6327
The State Board of Insurance in an open meeting on December 12, 1989, adopted amendments to Rule X of the rules and regulations governing pool and servicing company assignments of risks as related to amortization of assessments.

The amended rules and regulations apply effective 12:01 a.m. January 1, 1990.

The board adopted the amendments to the rules and regulations under the authority and jurisdiction of the Insurance Code, Articles 5.55-5.68-1, 5.76, and 5.96, and on an emergency basis as provided in Article 5.96(i).

This notification is filed pursuant to the Texas Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 19, 1989.

TRD-8912173 Nicholas Murphy Chief Clerk State Board of Insurance

Effective date: January 15, 1990
Proposal publication date: May 1, 1990
For further information, please call: (512) 463-6327

The State Board of Insurance has adopted a filing submitted by the Texas Department of Licensing and Regulation (formerly the Texas Department of Labor and Standards) of a revised form for the auctioneer/associate auctioneer bond.

In accordance with the provisions of the insurance code, Article 5.97, a text of the proposed filing has been filed in the office of the Chief Clerk of the State Board of Insurance. The proposed filing has been available for public inspection for 15 days and a public hearing was not requested by any party.

The auctioneer/associate auctioneer bond has been revised to change the bond term from being renewed annually to a continuous term to run for a period of two years after the licensee ceases to operate as an auctioneer/associate auctioneer. The form has also been revised for clarity.

There is no change in the penal sum ($5,000), rate ($10 per M per annum), or the class code (479).

The revised form becomes effective January 15, 1990.

This notice is filed pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 19, 1989.

TRD-8912174 Nicholas Murphy Chief Clerk State Board of Insurance

Effective date: January 15, 1990
For further information, please call: (512) 463-6327
Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the Texas Register.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the Texas Register.

Texas Education Agency

Thursday, January 4, 1990, 1 p.m. The State Board of Education (SBOE) Committee on School Finance and Others Members of the SBOE of the Texas Education Agency will meet at Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will hold a work session to develop a plan for public school finance. It is anticipated that committee action will be taken to recommend a school finance plan to the full board in January. Other members of the SBOE have also been invited to participate in this work session.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: December 20, 1989, 4:28 p.m.
TRD-8912252

Texas Housing Agency

Thursday, December 21, 1989, 10 a.m. The Board of Directors of the Texas Housing Agency met at the THA Conference Room, Suite 300, 811 Barton Springs, Austin. According to the emergency revised agenda, the board will provide a period for public comments and suggestions on THA partnership role with Resolution Trust Corporation and/or Department of Housing and Urban Development (HUD) under terms of the affordable housing provision of Financial Institution Reform, Recovery and Enforcement Act (FIRREA); consider, discuss and possible act on recommendations as needed. The emergency status was necessary due to urgent public necessity to better manage and preserve state funds and property to provide safe, decent, and sanitary housing for families of low and moderate income.

Contact: Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: December 20, 1989, 9:49 a.m.
TRD-8912205

Texas Higher Education Coordinating Board

Tuesday, January 9, 1990, 9:30 a.m. The Texas Higher Education Coordinating Board will meet at the West Texas State University Board Room, West Texas State University, Canyon. According to the agenda, the public hearing is to discuss the West Texas State University merger with the Texas A&M University System.

Contact: David Gardner, P.O. Box 12788, Austin, Texas 78711, (512) 462-6450.

Filed: December 20, 1989, 4:35 p.m.
TRD-8912264

State Board of Insurance

Wednesday, December 27, 1989, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, a public hearing on docket number 10659 to consider the proposed plan of merger of Woodstock Life Insurance Company, Phoenix, Arizona, into Service Life and Casualty Insurance Company, Austin.

Contact: O.A. Cassity, III, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: December 19, 1989, 3:56 p.m.
TRD-8912169
Texas Department of Licensing and Regulation

Thursday, December 28, 1989, 9 a.m. The Manufactured Housing Division of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, Conference Room, 10th Floor, 920 Colorado, Austin. According to the agenda, the meeting will include proceedings that consider suspension, revocation, or denial of respondent's, economy mobile homes, license/registration for violation of Article 5221f, Texas Civil Statute and the department's manufactured housing rules and regulations.

Contact: Jack E. Shriver, 920 Colorado, Austin, Texas 78711, (512) 463-7332.

Filed: December 19, 1989, 4:43 p.m.

TRD-8912176

State Board of Plumbing Examiners

Monday, January 8, 1990, 1 a.m. The State Board of Plumbing Examiners will meet at 929 East 41st Street, Austin. According to the agenda, the board will recognize visitors; approve minutes of last meeting; review financial report and examination data; discuss hardship cases; water heater as it related to definition of plumbing in the law; discussion of meaning of "regularly employed" as used in the law; discussion of a statewide plumbing code; progress report on alternative sources of computer services; discussion of changes in the law; and any other topics for discussion that may come before the board.

Contact: Lynn Brown, 929 East 41st Street, Austin, Texas 78755, (512) 458-2148.

Filed: December 20, 1989, 9:19 a.m.

TRD-8912208

State Preservation Board

Thursday, January 11, 1990, 2 p.m. The State Preservation Board will meet at the Library and Archives Building, Room 314, Austin. According to the agenda, the board will approve minutes; review old or unfinished business: legislative council remodel; new business: listing of change requests; approval of rule amendments; Texas Capitol project; general land office building; annual financial report and approval of SPB meeting dates.

Contact: Michael Schneider, P.O. Box 13286, Austin, Texas 78711, (512) 463-5495.

Filed: December 19, 1989, 1:53 p.m.

TRD-8912150

Public Utility Commission of Texas

Thursday, January 4, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, a prehearing conference is scheduled on docket number 8985, application of Central Telephone Company of Texas to withdraw minimum monthly usage charge for switched access facilities.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 20, 1989, 3:27 p.m.

TRD-8912251

Public Utility Commission of Texas

Monday, January 8, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, a prehearing conference is scheduled on docket number 9186, application of Fort Bend Telephone Company for approval of revisions to the enhanced universal emergency number service tariff.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 20, 1989, 3:30 p.m.

TRD-8912248

Public Utility Commission of Texas

Monday, January 22, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, a hearing on the merits on docket numbers 8558 and 8218, inquiry of the general counsel into the reasonableness of the rates and services of Southwestern Bell Telephone Company and inquiry of the general counsel into the water rates prorate credit.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 20, 1989, 3:29 p.m.

TRD-8912249

Public Utility Commission of Texas

Thursday, February 22, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, a hearing on the merits on docket number 9128, application of Central Texas Telephone Cooperative to
revise tariff pursuant to PUC, substantive rule 23.24(b)(1).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 20, 1989, 3:27 p.m.

TRD-8912250

Public Utility Commission of Texas

Tuesday, April 10, 1990, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, a hearing on the merits on docket number 8046, complaint of Exxon Company, U.S.A. against Houston Lighting and Power Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 20, 1989, 3:30 p.m.

TRD-8912247

Texas Southern University

Tuesday, January 16, 1990, 5 p.m. The Personnel and Academic Affairs Committee of the Texas Southern University will meet at the Hannah Hall Board Conference Room 117, Texas Southern University, Houston. According to the agenda, the committee will consider personnel actions; report on progress of academic activities and programs.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-911.

Filed: December 20, 1989, 9:16 a.m.

TRD-8912211

Texas Southern University

Wednesday, January 17, 1990, 4 p.m. The Finance Committee of the Texas Southern University will meet at the Hannah Hall Board Conference Room 117, Texas Southern University, Houston. According to the agenda, the committee will consider matters relating to financial reporting systems, and budgets; fiscal reports from the administration; investments, and informational items.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-911.

Filed: December 20, 1989, 9:16 a.m.

TRD-8912210

Texas Southern University

Thursday, January 18, 1990, 4 p.m. The building and Grounds Committee of the Texas Southern University will meet at the Hannah Hall Board Conference Room 117, Texas Southern University, Houston. According to the agenda, the committee will consider construction change orders; payment to architects contractors and engineers; authorization and ratification of contracts and awards; review of on going construction and current contractual relations.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-911.

Filed: December 20, 1989, 9:16 a.m.

TRD-8912209

Texas Water Commission

Tuesday, December 19, 1989, 4 p.m. The Texas Water Commission held an emergency meeting in Room 123, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission considered various matters within the regulatory jurisdiction of the commission. The emergency status was due to continuous and adequate water service not being provided to the Scenic Hills subdivision resulting in imminent threat to public health.

Contact: Beverly DeZerda, P.O. Box 13087, Austin, Texas 78771, (512) 475-2161.

Filed: December 19, 1989, 12:44 p.m.

TRD-8912159

Texas Water Commission

Monday, January 22, 1990, 1 p.m. The Office of Hearings Examiner of the Texas Water Commission will meet in the Captain's Room, Nessler Center, 2010 Fifth Avenue North, Texas City. According to the agenda, the application by Texas Copper Corporation for proposed permit number 03120 authorizing discharge of once-through cooling water, cooling tower blowdown, acid plant wastewater, domestic wastewater and stormwater via a drainage ditch to Galveston Bay in segment number 2430 of the Bays and Estuaries.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78771, (512) 463-7875.

Filed: December 19, 1989, 1:33 p.m.

TRD-8912151

Texas Water Commission

Wednesday, January 31, 1990, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the public hearing will consider a temporary order for the Circle K Corporation to discharge treated recovered groundwater from a Circle K site at 4400 I-10 in Orange County, Texas. Treated groundwater would be discharged via a series of drainage ditches to an I-10 roadside ditch; thence to Adams Bayou in segment number 0508 of the Sabine River Basin.

Contact: Wendall Corrigan, P.O. Box 13087, Austin, Texas 78771, (512) 463-8069.

Filed: December 19, 1989, 11:01 a.m.

TRD-8912145

Texas Water Commission

Wednesday, February 7, 1990, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the notice of application by Cebler and Patricia Massey, application number 3200 for a water use permit to amend permit number 3956, as amended, to combine 159 acre-feet of water authorized by certificate number 14-2503 with the rights authorized by permit number 3956, as amended, and to amend permit number 3956, as combined, by designating a diversion point for the purchased water right, i.e., diversion point number 3 authorized by permit number 3956A. Applicants also seek to increase the authorized acreage irrigated from 6 acres to 100 acres near Coleman, Coleman County, Texas.

Contact: Rick Airey, P.O. Box 13087, Austin, Texas 78771, (512) 371-6384.

Filed: December 19, 1989, 1:33 p.m.

TRD-8912152

Texas Water Commission

Wednesday, February 7, 1990, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the notice of application by Mary Jaksik Zigmund, application number 5265, for a water use permit to divert 35 acre-feet of water per annum from Martinez Creek, tributary of Cibolo Creek, tributary of the San Antonio River, San Antonio River Basin to irrigate 25 acres of land, approximately 15 miles east of San Antonio, Bexar County, Texas.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78771, (512) 371-6389.
Regional Meetings
Meetings Filed December 19, 1989

The Burnet County Appraisal District Board of Directors will meet at 215 South Pierce, Burnet, December 28, 1989, at 9 a.m. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291.

Meetings Filed December 20, 1989

The Region VIII Education Service Center Board of Directors will meet at the Ramada Inn Restaurant, Mount Pleasant, December 28, 1989, at 11:30 a.m. Information may be obtained from Scott Ferguson, FM 1734, Mount Pleasant, Texas 75455, (214) 572-8551.

The Wood County Appraisal District Appraisal Review Board will meet at 217 North Main, Conference Room, Wood, De-
In Addition

The Texas Register is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Commerce
Weekly Reports on the 1989 Allocation of the State Ceiling on Certain Private Activity Bonds

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1988 is $839,250,000.

State legislation, Texas Civil Statutes, Article 5190.9(a), (the Act), established the allocation process for the State of Texas. The Act specifies that one-third of the state ceiling is to be made available to qualified mortgage bonds and of that one-third, one-third is available to the Texas Housing Agency. One-fourth of the state ceiling is available to state-voted issues, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation.

Pursuant to the Act, the aggregate amount for qualified mortgage bond subceiling is $279,750,000, with $186,500,000 available to the local housing authorities and $93,250,000 available to the Texas Housing Agency. The aggregate amount for state-voted issues is $209,812,500 and the amount for all other bonds requiring an allocation is $349,687,500.

Generally, the state ceiling is allocated on a first-come, first-served basis, with the Texas Department of Commerce (the department) administering the allocation system.

The information that follows is a weekly report of the allocation activity for the period, November 27, 1989-December 8, 1989.

Weekly report on the 1989 allocation of the state ceiling on certain private activity bonds as pursuant to Texas Civil Statutes, Article 5190.9(a).

Total amount of the $839,250,000 state ceiling remaining unreserved as of December 8, 1989: $4,787,166.

Comprehensive listing of bond issues which have received a reservation date pursuant to the Act from November 27, 1989-December 8, 1989: none.

Comprehensive listing of bonds issued and delivered as pursuant to the Act from November 27, 1989-December 8, 1989: none.

Issued in Austin, Texas, on December 14, 1989.

TRD-8912130 William D. Taylor Executive Director Texas Department of Commerce

Filed: December 19, 1989
For further information, please call: (512) 472-5059
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 Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

<table>
<thead>
<tr>
<th>Type of Rate Ceilings</th>
<th>Effective Period (Dates are Inclusive)</th>
<th>Consumer (3)/Agricultural/Commercial (4) thru $250,000</th>
<th>Commercial (4) over $250,000</th>
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<tr>
<td>Indicated (Weekly) Rate - Art. 1.04(a)(1)</td>
<td>12/25/89-12/31/89</td>
<td>18.00%</td>
<td>18.00%</td>
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<td>Monthly Rate Art. 1.04(c)(1)</td>
<td>12/01/89-12/31/89</td>
<td>18.00%</td>
<td>18.00%</td>
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<td>Standard Quarterly Rate - Art. 1.04(a)(2)</td>
<td>01/01/90-03/31/90</td>
<td>18.00%</td>
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<td>Retail Credit Card Quarterly Rate - Art. 1.11(3)</td>
<td>01/01/90-03/31/90</td>
<td>18.00%</td>
<td>N.A.</td>
</tr>
<tr>
<td>Lender Credit Card Quarterly Rate - Art. 15.02(d)(3)</td>
<td>01/01/90-03/31/90</td>
<td>15.19%</td>
<td>N.A.</td>
</tr>
<tr>
<td>Standard Annual Rate - Art. 1.04(a)(2)(2)</td>
<td>01/01/90-03/31/90</td>
<td>18.00%</td>
<td>18.00%</td>
</tr>
<tr>
<td>Retail Credit Card Annual Rate - Art. 1.11(3)</td>
<td>01/01/90-03/31/90</td>
<td>18.00%</td>
<td>N.A.</td>
</tr>
<tr>
<td>Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from:</td>
<td>01/01/90-03/31/90</td>
<td>18.00%</td>
<td>N.A.</td>
</tr>
<tr>
<td>Judgment Rate - Art. 1.05, Section 2</td>
<td>01/01/90-01/31/90</td>
<td>10.00%</td>
<td>10.00%</td>
</tr>
</tbody>
</table>

(1) For variable rate commercial transactions only.
(2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S.
(3) Credit for personal, family or household use.
(4) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on December 18, 1989.

TRD-8912201  Al Endsley
Consumer Credit Commissioner

Filed: December 20, 1989
For further information, please call: (512) 479-1280

Credit Union Department

Amended Notice of Hearing

The Credit Union Department will conduct a consolidated hearing to determine whether the applications for amendment to the bylaws for expansions of fields of membership by the following credit unions should be approved or disapproved:
Dallas Teachers Credit Union
Community Credit Union
City Employees Credit Union
FFE Operators Credit Union
Gifford-Hill Credit Union
Texas Industries Employees Credit Union

Dallas
Plano
Dallas
Lancaster
Dallas
Arlington

Time and Place of Hearing—the hearing will be held on February 20, 1990, at 9 a.m. at the William B. Travis Building, 1201 North Congress Avenue (Room 1-111), Capitol Complex, Austin.

Authority—Texas Civil Statutes, Articles 6252-13(a), 2461-206(b), and 2461-12.01 (Verson Supplement 1989); 7 Texas Administrative Code §93.221.

Names and Addresses of Parties:

Applicants -

S. E. Hale, President
Dallas Teachers Credit Union
P. O. Box 64728
Dallas, Texas  75206

Represented by:

Jerry Nugent
Rinehart & Nugent
1000 MBank Tower
Austin, Texas  78701

M. H. Hearn, President
Gifford-Hill Employees Credit Union
P. O. Box 210628
Dallas, Texas  75211

Represented by:

Bogdan Rentea
Cowless & Thompson
100 Congress Avenue, Suite 310
Austin, Texas  78701

Davis W. Marsh, President
City Employees Credit Union
7474 Ferguson Road
Dallas, Texas  75228

Represented by:

H. Louis Nichols
Sallinger, Nichols, Jackson, Kirk & Dillard
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas  75201
Gregg R. Bynum, President
FFE Operators Credit Union
P. O. Box 444
Lancaster, Texas 75146

Gerald L. Dunn, President
Texas Industries Employees Credit Union
P. O. Box 400
Arlington, Texas 76004

Garold (Gary) Base, President
Community Credit Union
P. O. Box 867119
Plano, Texas 75086

Represented by:

Duncan C. Norton
Winstead McGuire Sechrest & Minick
100 Congress Avenue, Suite 800
Austin, Texas 78701

Credit Union Department -

Robert W. Rogers
Deputy Commissioner
914 East Anderson Lane
Austin, Texas 78752

Represented by:

Everette Jobe
Assistant Attorney General
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Other Admitted Parties -

Pamela L. Stephens, Chief Executive Officer
Security One Federal Credit Union
Box 5583
Arlington, Texas 76011

Harry G. Hall, President
Denton Area Teachers Credit Union
P. O. Box 827
Denton, Texas 76202

Sherry L. O'Bryant, President
Garland Credit Union
626 Austin
Garland, Texas 75040
Larry R. Cole, Chief Executive Officer
Garland Federal Credit Union
703 W. Avenue D
Garland, Texas 75040-7001

Jo Johnston, Chairman
Las Colinas Federal Credit Union
P. O. Box 152072
Irving, Texas 75015

Leo Edwards, Chairman
Employees Federal Credit Union
7800 Stemmons, Suite 100
Dallas, Texas 75247

Charles B. Campbell, Jr., Chairman
Fort Worth City Credit Union
P. O. Box 100099
Fort Worth, Texas 76185-0099

Nature of Hearing—this hearing is a contested case under the Administrative Procedure Act and Texas Register Act, Texas Civil Statutes, Article 6252-13a. Each applicant must demonstrate: (1) the exact geographic boundaries expressed by city, county, or radius from the credit union’s principal or branch office; (2) whether its proposed expansion overlaps the field of membership of another credit union; (3) the nature and degree of the overlap; (4) whether the new group proposed to be served by the expansion has requested the expansion; (5) whether any efforts have been taken to resolve the overlap, if any; (6) the applicant’s ability to adequately serve the proposed expanded field of membership. Each applicant shall also be required to provide the information requested in the application to amend article of incorporation or bylaws filed with the Credit Union Department. The hearing officer shall consider this and other information necessary to comply with the provisions of the Texas Civil Statutes, Articles 2461-1.05 and 2.06(b). The Credit Union Commission may decide not to hold an additional hearing on the application.

Deadline for Requesting to be a Party—at the hearing, only those persons admitted as parties by October 9, 1989 and their witnesses will be allowed to participate. The commissioner made a determination on party status at the prehearing conference held on October 16, 1989. The listing of parties is presented herein. Witnesses for the parties were designated prior to November 3, 1989. The hearing officer cannot grant additional party status unless there is good cause for the request arriving late.

Hearing Officer—Nancy Ricketts (2003 Cypress Point East, Austin, Texas 78746) was appointed on November 7, 1989, to serve as hearing officer.

Preliminary Hearing—a preliminary hearing will be convened on January 3, 1990, at 9 a.m. at the Credit Union Department Office, 914 East Anderson Lane, Austin. This hearing is to consider the motion of Dallas Teachers Credit Union to designate rules and standards. Any party that desires to file a brief regarding the motion to determine the rules and standards must submit its brief on or before December 29, 1989. This preliminary hearing will be open to the public.

Public Attendance and Testimony—members of the general public may attend any conference or hearing. Those who plan to attend are encouraged to telephone the Credit Union Department Office in Austin at (512) 837-9236, a day or two prior to the hearing date in order to confirm the setting, since continuances are sometimes granted.

Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the Credit Union Department Office at (512) 837-9236, to find out the names and addresses of all admitted parties who may be contacted about the possibility of presenting testimony.
Texas Commission for the Deaf
Consultant Proposal Request

In compliance with Article 6252-11c, the Texas Commission for the Deaf (TCD) is requesting the services of a consultant for the provision of a pilot interpreter services project in San Antonio. A total of $5,000 is available to be used from January 30, 1990-August 31, 1990. The purpose of this project is to coordinate the delivery of services to persons who are deaf and to reduce duplication of services in Bexar County. Gaps in the delivery of services will be identified with Bexar County federal, state, and local entities mandated to provide access to persons who are deaf or hearing impaired under the State Human Resources Code, Texas Code of Criminal Procedure, Texas Civil Practices and Remedies Code, the Rehabilitation Act of 1973, §504, the Civil Rights Restoration Act of 1987, and, upon passage, the Americans with Disabilities Act. The consultant shall report to TCD the following information on each entity identified: description of programs/services, coordination of services, duplication of services, gaps in the delivery of services, and methods to resolve each gap identified. In the process of establishing memoranda of understanding, the consultant shall refer entities needing to acquire interpreter services to Bexar County Deaf Council or other available sources of interpreter services to reduce dependence upon TCD interpreter service funds and duplication of services.

Contact Person. Further information regarding the provision of the above-stated services to the TCD and requests for applications necessary to indicate interest in becoming a consultant may be directed to Mark W. Seeger, Coordinator of Direct Services, Texas Commission for the Deaf, (512) 469-8991.

Deadline for Submittal of Application. Deadline for the receipt of applications in the offices of the Texas Commission for the Deaf is on or before January 19, 1990, at 5 p.m. Applications received after the established deadline cannot be considered for selection. Applications are to be submitted to Mark W. Seeger, Coordinator of Direct Services, Texas Commission for the Deaf, P.O. Box 12904, Austin, Texas 78711-2904.

Guidelines for Submitting Application. Guidelines for the delivery of services to the TCD will provide assurances that the consultant will, as a minimum: (A) be an agency, organization, or individual who is willing to provide services as a consultant to the TCD in the specified geographical area; (B) provide a location and description of the intended headquarters to be used in the delivery of services; (C) be willing to cooperate with the commission regarding its goals, standards, requirements, and recommendations; (D) possess the necessary skills, knowledge, and expertise for the planning, development, and implementation of described services; (E) utilize, to the highest degree possible, local community, and state resources; (F) provide detailed information on entire program budget requirements including outside funding sources; (G) furnish the commission with reports, as required, in the format prescribed by the commission; and (H) establish and maintain a method to secure and maintain the confidentiality of records and services in accordance with any and all applicable state and federal rules, laws, and regulations.
Application Evaluation Criteria. Applications will be evaluated by the TCD on the following basis: (A) submission of completed application on or before the established deadline; (B) operation of the program within commission authority; (C) respondent's ability to provide a high-quality program aimed at meeting the needs of the TCD; (D) letters of endorsement and/or cooperation; (E) ability to implement project upon receiving notification from the commission on award of contract.

Contract Award. Final selection will be made by the commission, using previously mentioned evaluation procedures. Award will not necessarily be made to the contractor or applicant offering the lowest cost. Close consideration will be given to the ability to provide quality direct services based on the commission's evaluation criteria.

The proposed contract is a pilot project under the direct services program that has not previously been performed by any contractor through TCD reimbursement. The commission reserves the right to accept or reject any or all applications submitted. The commission is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the materials provided only as a means of identifying the various elements which the commission considers basic to a delivery of direct services. The commission will base its choice on demonstrated competence, qualifications, and evidence of superior conformance to criteria. This request does not commit the commission to pay any costs incurred prior to execution of a contract.

The commission will announce the contract award for this pilot project January, 1990. The contract may be renewable for fiscal year 1991, contingent upon the receipt of additional funds. This contract will be funded as a result of a contribution to TCD for the purposes of providing the previously stated services in the Bexar County area. The contracted services shall begin on January 30, 1990. The contract will include the possibility for amendments to permit for additional funds during the contract period, contingent upon additional contributions for this service.

Conditions for Termination of Services. Services provided may be terminated if the contractor fails to comply with contract requirements.

Issued in Austin, Texas on December 17, 1989.

TRD-891232  Larry D. Evans  Executive Director  Texas Commission for the Deaf

Filed: December 19, 1989

For further information, please call: (512) 469-9891

Governor's Office of Budget and Planning

Request for Proposals

Notice of Invitation.

The Energy Management Center (EMC) in the Governor's Office of Budget and Planning invites proposals from qualified social service agencies, community groups, utilities, and local governments to implement a program to promote the efficient use of energy in the homes of low-income senior citizens as part of the Seniors Helping Seniors Program.

Services to be Performed. One or more contractors will be selected to perform the following services.

1. Work with local government and non-profit agencies to identify senior citizens whose homes are in need of weatherization, but who are ineligible for existing weatherization programs.

2. Market the program to eligible households.

3. Recruit and train senior citizen volunteers as energy auditors and energy counselors.

4. Assign volunteer teams to visit the homes of eligible senior citizens, and supervise these volunteers in providing, at a minimum, the following services:
   a. conducting a walk-through energy audit of the residence;
   b. weatherstripping doors, caulking around windows, installing water flow restrictors, wrapping hot water heaters, and other low-cost weatherization measures as needed;
   c. counseling about energy behavior modifications, such as lowering thermostats, which can reduce utility bills;
   d. leaving written literature (provided by the Energy Extension Service) with additional information about energy saving opportunities; and
   e. making referrals to other agencies and organizations that may offer assistance with more expensive energy efficiency measures.

5. Conduct follow-up visits or telephone interviews with a sample of program participants, and prepare a final report evaluating:
   a. the impact of the program on the participants' energy awareness;
   b. changes in the energy use patterns of program participants; and
   c. measurable energy savings attributable to the program.

6. Collect and report additional data as requested by the EMC for evaluation purposes.

Restrictions on the Use of Funds. This program is funded with oil overcharge funds appropriated to the Energy Extension Service (EES) by the 71st Texas Legislature. Oil overcharge funds are monetary settlements returned to the states as a result of litigation by the United States Department of Energy (DOE) against certain oil companies for violations of price controls in effect between 1973 and 1981. The courts returned these funds to the states for use in certain energy programs deemed to provide restitution to citizens aggrieved by the overcharges.

Funds are subject to program guidelines of the United States Department of Energy's Energy Extension Service and the United States v. Exxon court decision, and may not be used to pay indirect or administrative costs. The funds may be used to supplement existing programs, but may not supplant funds already allocated to the programs.

Projects funded with Exxon oil overcharge funds may not be used to purchase weatherization materials, unless the project meets the DOE guidelines for demonstration projects. Proposals may be structured so that all the weatherization materials are provided by the proposer as match. If oil overcharge funds are requested to pay for weatherization materials, the proposal must meet the DOE demonstration guidelines, which will be included with the application packet.

Projects selected will be funded on a cost reimbursement basis. All expenses must be properly documented and permissible under the contract and under federal guidelines, and all are subject to approval by the governor's office. No advance payments are allowable.
Contact Person. To obtain a copy of the proposal format, or for more information, contact Douglas Key, Energy Management Center, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, (512) 463-1870.

Closing Date. Six copies of the proposal should be sent to: Kim Munyon, Energy Management Center, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711.

The Energy Management Center is located in room 620 of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78701. Proposals should be sent by certified mail or by courier and must be received no later than 3 p.m. on March 16, 1990. Proposals received after that time will not be considered.

Selection Criteria. Proposals must adhere to the format provided by the Energy Management Center. Proposals will be evaluated using the following criteria:

1. proposer's experience administering programs which deliver services to senior citizens (20%);
2. proposer's experience administering energy efficiency programs (20%);
3. proposer's plan for training senior volunteers as energy auditors/counselors (15%);
4. proposer's plan for identifying eligible seniors and marketing the program to the target audience (10%);
5. degree of community support for the program, evidenced by letters of support from senior citizen groups, public and private agencies providing services to senior citizens, gas and electric utilities, local governments, businesses and business associations, and civic and religious organizations (15%);
6. proposer's plan for evaluating the effectiveness of the program (10%); and
7. reasonableness of the proposed budget and the amount of local match committed. A minimum 25% local match is required. This match may be cash or in-kind, such as donated weatherization materials or staff time (10%).

Final selection of contractors will be based on the recommendations of a proposal review panel. The EMC reserves the right to reject any or all proposals and is under no legal requirement to execute a contract on the basis of this request for proposals. If two or more proposals are ranked so closely that a decision cannot be made, the review panel may request finalists to provide additional information or to meet with Energy Management Center staff in Austin prior to final selection. No respondent, however, will be reimbursed for any costs incurred in the preparation, submission, or clarification of a proposal.

Issued in Austin, Texas on December 18, 1989.

TRD-89/12147 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Filed: December 18, 1989
For further information, please call: (512) 835-7000

North Central Texas Council of Governments
Consultant Proposal Request

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Civil Statutes, Article 6252-11.

The NCTCOG and the Fort Worth Transportation Authority (FWTA) are requesting proposals to conduct a customer service audit. The audit will begin with a detailed evaluation of operational procedures. The first phase will include workflow analysis, equipment analysis, and development of potential ways to improve operations. The consultant will provide tools to help with implementation of the recommended improvements. At the end of the process, the consultant will present FWTA with detailed policies and procedures for all areas of customer service function, including training/orientation, retail sales, complaint/compliment handling, lost and found operations, and bus schedule and trip planning information.

Contract Award Procedures. The firm selected to perform this study will be recommended by a consultant selection committee. The committee 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 selection committee's recommendation, and if it is found acceptable, will issue an award of contract.

The North Central Texas Council of Governments, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 42 United States Code 2000d to 2000d-4, and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, or national origin in consideration of an award.

Respondents must be willing to abide by all the applicable regulations of the Urban Mass Transportation Administration, United States Department of Transportation, including inspection and audit.

The contract will comply with all federal and state laws and regulations applicable to subcontractors, including, but not limited to, equal employment opportunity, Davis-Bacon Act, and records management.

Due Date. Proposals must be submitted no later than noon, Friday, January 26, 1990, to Shirley Henry, North
Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, P.O. Drawer COG, Arlington, Texas 75005-5888. For more information and copies of the request for proposals, contact Shirley Henry, (817) 640-3300.

Issued in Austin, Texas on December 15, 1989.

TRD-8912117 William J. Pitstick Executive Director North Central Texas Council of Governments 

Filed: December 18, 1989

For further information, please call: (817) 640-3300

Public Utility Commission of Texas

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 8, 1989, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of West Texas Utilities for a certificate of convenience and necessity for a proposed transmission line and related substation within Pecos County, Docket Number 9195 before the Public Utility Commission of Texas.

The Application: In Docket Number 9195, West Texas Utilities Company requests approval of its application to construct approximately two miles of 69kV transmission line within Pecos County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas at 7800 Shallow Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on December 19, 1989.

TRD-8912105 Mary Ross McDonald Secretary of the Commission Public Utility Commission of Texas 

Filed: December 19, 1989

For further information, please call: (512) 458-0100

Railroad Commission of Texas

Cancellation of Hearing

The public hearing of the Railroad Commission of Texas on a proposed amendment to 16 TAC §5.582, concerning deviations of up to 40% by common carriers on shipments of 501 pounds or more has been postponed. Notice of the hearing, which was to be held on January 3, 1990, was published in the December 1, 1989, issue of the Texas Register (14 TexReg 6324). The hearing was cancelled because the commission has decided to republish an amended proposal regarding deviations. Public hearings, as previously requested, will be held on dates to be announced. Comments already submitted will be considered in regard to the new proposal.

Issued in Austin, Texas on December 18, 1989.

TexReg 8912128Cri talkPayne 

Assistant Director, Legal Division, General Law 

Railroad Commission of Texas 

Filed: December 18, 1989

For further information, please call: (512) 463-7094

Texas Water Commission

Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Graham, Permit Number 10487-01, on December 13, 1989, assessing $16,400 in administrative penalties, $10,000 in deferred penalties (contingent upon compliance), and imposing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Irene Montelongo, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on December 15, 1989.

TRD-8912109 Gloria A. Vasquez 

Notices Coordinator 

Texas Water Commission 

Filed: December 18, 1989

For further information, please call: (512) 463-8069.

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Opal Durant doing business as Ridge Utilities, Permit Number 13025-01, on
December 13, 1989, imposing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Sharon J. Smith, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on December 15, 1989.

TRD-8912111 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: December 18, 1989

For further information, please call: (512) 463-8069.

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Lubbock, Permit Number 10353-02, on December 13, 1989, assessing $42,000 in administrative penalties, and $42,000 in deferred penalties (contingent upon full compliance).

Information concerning any aspect of this order may be obtained by contacting William W. Thompson, III, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on December 15, 1989.

TRD-8912112 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: December 18, 1989

For further information, please call: (512) 463-8069.