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T.J. Mendietta
2nd Grade

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

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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RULE REVIEW

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Public Utility Commission of Texas

Office of the Secretary of State

Texas Department of Transportation

Texas Workers' Compensation Commission

THE ATTORNEY GENERAL

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

Opinions

Opinion No. GA-0043

The Honorable Robert E. "Bobby" Bell

District Attorney

Jackson County Courthouse

115 West Main, Room 205

Edna, Texas 77957

Re: Interpretation of section 160.633 of the Texas Family Code (RQ-0612-JC)

S U M M A R Y

The word "proceeding" for the purposes of a suit to adjudicate the paternity of a child includes all possible steps in the action. The final order in such a suit is open for inspection and copying, whatever the nature of the judgment. Save with the consent of the parties or by court order, any and all other records of the proceeding are permanently closed.

Opinion No. GA-0044

The Honorable Florence Shapiro

Chair, Senate Committee on Education

Texas State Senate

P.O. Box 12068

Austin, Texas 78711-2068

Re: Whether a home-rule municipality may operate a cemetery (RQ-0614-JC)

S U M M A R Y

A home-rule municipality is authorized to operate a cemetery.

Opinion No. GA-0045

The Honorable Rodney Ellis

Chair, Senate Committee on Government Organization

Texas State Senate

P.O. Box 12068

Austin, Texas 78711-2068

Re: Whether Exchanges of the Farmers Insurance Group of Companies® are "authorized insurers" that are required to file withdrawal plans under article 21.49-2C of the Texas Insurance Code; whether their proposed refusal to renew policies of homeowners in Texas would violate state law; and whether the Commissioner of Insurance may impose a moratorium on the approval of a plan for withdrawal (RQ-0620-JC)

S U M M A R Y

The refusal of Farmers Insurance Exchange and Fire Insurance Exchange to renew the policies of Texas homeowners would not violate state law, provided that the Exchanges follow the notice procedure set forth in article 21.49-2B, section 5 of the Insurance Code. The Exchanges would not be required to file a plan for withdrawal from the Texas homeowners' insurance market, as they are reciprocal exchange insurers that are not regulated by article 21.49- 2C of the Insurance Code. Nor are reciprocal exchange insurers subject to a moratorium issued by the Commissioner of Insurance.

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

TRD-200302030
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 26, 2003

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Health and Human Services Commission (HHSC) proposes to amend §355.8401, concerning case management reimbursement methodology, and to repeal §355.8481, concerning EPSDT: Texas Health Steps medical case management, in its Medicaid Reimbursement Rates chapter. HHSC also proposes to re-title Division 21 from Case Management for High-Risk Pregnant Women and High-Risk Infants to Case Management for Children and Pregnant Women. The amendment and repeal are necessary to reflect the consolidation by the Texas Department of Health of two existing case management programs, Targeted Case Management Services for Pregnant Women and Infants and Texas Health Steps Medical Case Management, to form one program, Case Management for Children and Pregnant Women. Section 355.8401 is being amended to reflect the name of the new program and to correct organizational references. Section 355.8481 is being repealed as it is no longer needed. There are no changes to the methodology or rates used to reimburse providers for covered case management services.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that for the first five years the proposed amendment and repeal are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the amendment and repeal. The reimbursement methodology and rates for the new consolidated case management program remain the same as those used in the previous programs.

Steve Lorenzen, Director of Rate Analysis, has determined that for each year of the first five years the proposed amendment and repeal are in effect, the public benefit anticipated as a result of enforcing the amendment and repeal is that HHSC reimbursement rules will be consistent with the consolidated case management program. There is no anticipated impact on small businesses and micro-businesses to comply with the amendment and repeal as proposed as they will not be required to alter their business practices as a result of the amendment and repeal. There are no anticipated economic costs to persons who are required to comply with the proposed amendment and repeal. There is no anticipated impact on local employment.

HHSC has determined that the proposed amended rule and repeal are not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed amendment and repeal are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

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

Written comments on the proposal may be submitted to Mr. Joe Branton, Rate Analysis Department, Texas Health and Human Services Commission, 1100 West 49th Street, Austin, Texas 78756, within 30 days of publication of this proposal in the *Texas Register*.

DIVISION 21. CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN

1 TAC §355.8401

The amendment is proposed under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment affects the Human Resources Code, Chapter 32 and the Texas Government Code, Chapter 531.

§355.8401. Case Management Reimbursement Methodology.

(a) General information. The Health and Human Services Commission (HHSC) [~~Texas Department of Health (department)~~] will reimburse qualified providers for case management services provided to Medicaid-eligible children and [~~individuals who are high-risk~~] pregnant women [~~or high-risk infants~~]. The HHSC [~~department~~] determines reimbursement rates at least annually for case management services. These rates are:

(1) uniform throughout the geographic area(s) providing the service; and

(2) cost-related.

(b) Basis for rate analysis.

(1) For the initial reimbursement period, providers are reimbursed based on rates set as a result of modeling other rates for case management services, and cost information provided by the Texas Department of Health [~~department~~].

(2) At some future date, as yet unspecified, reimbursements will be based on cost-based prospective rates.

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

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301884
Steve Aragon
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 424-6576

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DIVISION 25. EPSDT: TEXAS HEALTHSTEPS MEDICAL CASE MANAGEMENT

1 TAC §355.8481

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

The repeal is proposed under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed repeal affects the Human Resources Code, Chapter 32 and the Texas Government Code, Chapter 531.

§355.8481. THSteps Medical Case Management Reimbursement Methodology.

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

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301883
Steve Aragon
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 424-6576

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION

7 TAC §§101.1, 101.5, 101.6

The State Securities Board proposes amendments to §§101.1, 101.5, and 101.6 concerning general administrative matters. Specifically, grammatical errors in §101.1 would be corrected and §101.5 and §101.6 would be amended to correctly identify a successor agency and its rules. An additional change to §101.5(b) would increase the certification fee charged for copies from five to ten dollars. This brings the certification fee charged by the agency in line with the equivalent fee charged by the Secretary of State.

Micheal Northcutt, Director, Registration Division and Don Raschke, Chief Financial Officer, have determined that for the first five-year period that §101.1 and §101.6 are in effect there will be no foreseeable implications for state or local government as a result of enforcing or administering these rules. Mr. Northcutt and Mr. Raschke have determined that there will be fiscal implications as a result of enforcing or administering 101.5.

The effect on state government for the first five year period that amendment to subsection (b) is in effect will be an increase in revenue for each of those years at $180.

Mr. Northcutt and Mr. Raschke also have determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be that persons requesting copies will be apprised of the corresponding charges and that cross-references contained in the Board's rules will be accurate. There will be no fiscal implications for micro- or small businesses. There is no anticipated economic costs to persons who are required to comply with rules as proposed except for the minimal increase, described above, to be paid by persons requesting copies be certified. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30/45 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendments are proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Statutes and codes affected: Texas Civil Statutes, Article 581-35.F.

§101.1. Authority.

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

(f) Severability. If any provision of these sections be held invalid, such invalidity shall not affect other provisions that [~~which~~] can be given effect without the invalid provision, and to this end the provisions of these sections are declared to be severable.

§101.5. Charges for Copies of Public Records.

(a) The cost to any person requesting copies of any public record of the State Securities Board pursuant to the open records provisions of the Texas Government Code, Title 5, Chapter 552, will be the

applicable charge established by the Texas Building and Procurement [~~General Services~~] Commission in Title 1, Part 5, Chapter 111, Subchapter C, of the Texas Administrative Code, which is [~~as~~] reflected in Form 133.2.

(b) For certified copies the charge shall be $1.00 per page plus a $10.00 [~~$5.00~~] certification fee.

§101.6. Historically Underutilized Business Program. The

State Securities Board adopts by reference the rules established by the Texas Building and Procurement [~~General Services~~] Commission relating to the Historically Underutilized Business Program, contained in Title 1, Part 5, Chapter 111, Subchapter B, of the Texas Administrative Code.

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

Filed with the Office of the Secretary of State on March 19, 2003.

TRD-200301830
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 305-8300

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CHAPTER 104. PROCEDURE FOR REVIEW OF APPLICATIONS

7 TAC §§104.1, 104.2, 104.4 - 104.6

The State Securities Board proposes nonsubstantive amendments to §§104.1, 104.2, 104.4, 104.5, and 104.6, concerning the procedure for review of applications. Specifically, an outdated qualifier would be eliminated from §104.1; a statutory reference would be updated in §104.2; changes in §104.6 would recognize the Central Registration Depository (CRD) and the Investment Adviser Registration Depository (IARD); and changes would be made in §104.4 and §104.5 to recognize an internal reorganization creating a single Registration Division within the Agency.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the rules are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Northcutt also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be that the language will reflect current terminology and practice and conform to other Board rules and the Texas Securities Act. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30/45 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendments are proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposed amendments affect Texas Civil Statutes, Articles 581-7, 581-10, 581-13, and 581-15, and Texas Government Code, §2005.003.

§104.1. Scope.

These rules of procedure are generally applicable to the review of applications and the agency's decision whether to grant, deny, or allow withdrawal of applications. [~~The sections apply only to applications covered by such rules that are first received by the agency on or after January 1, 1988.~~]

§104.2. Purpose.

These sections are intended to implement the provisions of Texas Government Code, Chapter 2005 [~~House Bill 5, 70th Legislature, 1987~~]. They are not intended to supersede any substantive requirement of the Texas Securities Act or Board rules. If a provision under one of these sections would cause such a conflict, the provision will not be given effect under the particular circumstances giving rise to the conflict.

§104.4. [~~Securities~~] Registration of Securities--Review of Applications.

(a) Within seven days of receipt by the Agency of an application to register securities, if the application does not contain all required information, the [~~Securities~~] Registration Division will send by United States mail at the Agency's expense a deficiency letter to the applicant setting forth a list of items or exhibits that [~~which~~] have not been filed and that [~~which~~], pursuant to requirements of the Texas Securities Act or Board rules, must be filed with the Agency.

(b) Within 45 days of receipt by the Agency of all requested items and exhibits necessary in order to analyze the offering, the [~~Securities~~] Registration Division shall review the application and shall send by United States mail at the Agency's expense an initial comment letter setting forth deviations from the substantive requirements of the Act or Board rules relating to the registration of securities. This process may be repeated if the applicant suggests that alternatives be considered, or the applicant's response does not resolve substantive issues.

(c) Upon request of the applicant, comments may be transmitted at the applicant's expense by telephone, facsimile [~~graphic scanning~~], or other more timely means of communication.

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

(f) Within 14 days of the division staff's recommendation the application shall be reviewed by the Director (or Assistant Director) of the [~~Securities~~] Registration Division and the Deputy Commissioner and/or Securities Commissioner. Additional comments, if any, raised at these stages of review must be communicated to the applicant immediately.

(g) The final decision to grant, deny, or allow withdrawal of the application must be made and communicated to the applicant within 14 days of the latter of:

(1) the division staff's recommendation, [~~;~~] or

(2) the receipt by the Agency of complete responses to any additional comments raised pursuant to subsection (f) of this section.

§104.5. [~~Dealer~~] Registration of Dealers and Investment Advisers--Review of Applications.

(a) Within 14 days of receipt by the Agency of an application and a fee that is sufficient for registration as a dealer or investment adviser, the [~~Dealer~~] Registration Division shall send by United States mail at the Agency's expense, a deficiency letter to the applicant setting forth a list of items or exhibits that [~~which~~] either have not been filed or that contain errors or omissions. If the applicant is filing through the Central Registration Depository (CRD) or the Investment Adviser Registration Depository (IARD), deficiency corrections of a procedural, non-disciplinary nature will be handled by the CRD or IARD [~~central registration depository~~].

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

(b) Within 14 days of receipt by the Agency of all requested items and exhibits, the division staff shall review the file and, if necessary, shall send by United States mail at the Agency's expense a comment letter setting forth any deviations from the substantive requirements of the Texas Securities Act or Board rules relating to the registration of dealers or investment advisers. This process may be repeated to raise subsequent comments.

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

(e) Within 14 days of the division staff's recommendation, any remaining issues shall be addressed by the director of the [~~Dealer~~] Registration Division. Additional comments, if any, raised at this stage of review must be communicated to the applicant immediately.

(f) The final decision to grant, deny, or allow withdrawal of the application must be made and communicated to the applicant within 14 days of the latter of:

(1) the division's recommendation, [~~;~~] or

(2) receipt by the Agency of complete responses to any remaining comments.

§104.6. Exceeding the Time Periods.

(a) The Agency may exceed the time periods set forth in these sections if:

(1) (No change.)

(2) the Securities and Exchange Commission, CRD, IARD, or another public or private entity, including the applicant itself, causes the delay;

(3)-(4) (No change.)

(b)-(f) (No change.)

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

Filed with the Office of the Secretary of State on March 19, 2003.

TRD-200301831
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 305-8300

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CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.4

The State Securities Board proposes an amendment to §113.4, concerning consent to service of process. The amendment would eliminate the requirement that a resolution be filed with the consent of service in connection with an application to register securities. Changes made to the Texas Securities Act, §8, in the last legislative session eliminated this requirement from the statute.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to eliminate an unnecessary filing. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30/45 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Articles 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposed amendment affects Texas Civil Statutes, Article 581-7.

§113.4. Application for Registration.

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

(c) Consents to service of process.

(1) Except as provided in paragraphs (2) and (3) of this subsection, all applications to register securities issued by an issuer which is organized under the laws of any other state, territory, or government, or domiciled in any state other than Texas, must include with the application a written consent to service of process duly executed by an authorized agent of the issuer [~~, under proper resolution or authority of the appropriate governing body,~~] appointing the Securities Commissioner irrevocably its true and lawful attorney upon whom process in any action or proceeding against such issuer arising out of any transaction subject to the Texas Securities Act may be served with the same effect as if such issuer were organized or created under the laws of Texas and had been lawfully served with process herein.

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

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

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

Filed with the Office of the Secretary of State on March 19, 2003.

TRD-200301832

Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 305-8300

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CHAPTER 114. FEDERAL COVERED SECURITIES

7 TAC §114.3

The State Securities Board proposes an amendment to §114.3, concerning consents to service of process. The amendment would eliminate the requirement that a resolution be filed with the consent of service in connection with a notice filing for federal covered securities. Changes made to the Texas Securities Act, §8, in the last legislative session eliminated this requirement from the statute.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to eliminate an unnecessary filing. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30/45 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Articles 581-28-1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

The proposed amendment Texas Civil Statutes, Articles 581-5, 581-6, and 581-7.

§114.3. Consents to Service of Process.

(a) Unless otherwise provided in subsection (b) of this section, a consent to service of process is required from an issuer of federal covered securities that is organized under the laws of any other state, territory, or government, or domiciled in any state other than Texas. The written consent to service of process must be duly executed by an authorized agent of the issuer [~~, under proper resolution or authority of the appropriate governing body,~~] and irrevocably appoint the Securities Commissioner as the issuer's true and lawful attorney upon whom all process may be served in any action or proceeding against such issuer arising out of any transaction subject to the Texas Securities Act with the same effect as if such issuer were organized or created under the laws of Texas and had been lawfully served with process therein.

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

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

Filed with the Office of the Secretary of State on March 19, 2003.

TRD-200301833
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 305-8300

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CHAPTER 133. FORMS

7 TAC §133.8

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

The State Securities Board proposes the repeal of §133.8, a form concerning power of attorney. The repeal of this form will allow for the simultaneous adoption of a new §133.8 Power of Attorney form, which is being concurrently proposed.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the repeal is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Northcutt also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an outdated form. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30/45 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The repeal is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Statutes and codes affected: none applicable.

§133.8. Power of Attorney.

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

Filed with the Office of the Secretary of State on March 19, 2003.

TRD-200301834

Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 305-8300

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7 TAC §133.8

The State Securities Board proposes new §133.8, a form concerning Power of attorney. The new form will replace an existing form, which is concurrently proposed for repeal. The new form eliminates a resolution that is no longer required by statute.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a shorter form that does not contain unnecessary material. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the new rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30/45 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The new rule is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Statutes and codes affected: none applicable.

§133.8. Power of Attorney.

The State Securities Board proposes to adopt by reference the power of attorney form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711.

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

Filed with the Office of the Secretary of State on March 19, 2003.

TRD-200301835
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 305-8300

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7 TAC §133.33

The State Securities Board proposes an amendment to §133.33, concerning uniform forms accepted. This amendment would remove a reference to Form U-2A, uniform corporate resolution, and renumbers the remaining paragraphs. Changes made to the Texas Securities Act, §8, in the last legislative session eliminated the requirement that a resolution be filed from the statute.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to eliminate a reference to an obsolete form. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30/45 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Statutes and codes affected: none applicable.

§133.33. Uniform Forms Accepted, Required, or Recommended.

(a) Assuming the appropriate exhibits and supplements are filed, the State Securities Board will accept for filing the following "Uniform Forms" in lieu of the requisite Texas form, if any.

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

~~[(3) U-2A. Uniform Corporate Resolution.]~~

(3) [~~(4)~~] U-4. Uniform Application for Securities Industry Registration or Transfer.

(4) [~~(5)~~] U-5. Uniform Termination Notice for Securities Industry Registration.

(5) [~~(6)~~] ADV. Uniform Application for Investment Adviser Registration.

(6) [~~(7)~~] BD. Uniform Application for Broker-Dealer Registration.

(7) [~~(8)~~] USR-1. Investment Company Report of Sales.

(8) [~~(9)~~] U-7. Small Company Offerings Registration Form may be used as a disclosure guide when making a small company offering of securities pursuant to an exemption under the Act or when making small public offerings pursuant to the Act, §7.A.

(9) [~~(10)~~] NF. Uniform Investment Company Notice Filing.

(10) [~~(11)~~] Model Accredited Investor Exemption Uniform Notice of Transaction.

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

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

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Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 305-8300

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 12. COAL MINING REGULATIONS

The Railroad Commission of Texas proposes amendments to §12.3, relating to Definitions; the repeal of §12.71, relating to Areas Where Mining is Prohibited or Limited; new §12.71, relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited; the repeal of §12.72, relating to Procedures; new §12.72, relating to Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations; the repeal of §12.73, relating to Responsibility; new §12.73, relating to Commission Obligations at Time of Permit Application Review; new §12.74, relating to Responsibility; and amendments to §12.77, relating to Applicability and Restrictions on Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations; §12.111, relating to General Requirements: Exploration That Will Remove More Than 250 Tons of Coal or That Will Occur on Land Designated as Unsuitable for Surface Coal Mining Operations; §12.112, relating to Applications: Approval or Disapproval of Exploration of More Than 250 Tons of Coal or That Will Occur on Land Designated as Unsuitable for Surface Coal Mining Operations; §12.113, relating to Applications: Notice and Hearing for Exploration of More Than 250 Tons; §12.118, relating to Relationship to Areas Designated Unsuitable for Mining; §12.151, relating to Protection of Public Parks and Historic Places; §12.152, relating to Relocation or Use of Public Roads; §12.158, relating to Relationship to Areas Designated Unsuitable for Mining; §12.191, Relating to Protection of Public Parks and Historic Places; §12.192, relating to Relocation or Use of Public Roads; §12.207, relating to Public Notices of Filing of Permit Applications; and §12.216, relating to Criteria for Permit Approval or Denial.

The Commission proposes to repeal §12.71, relating to Areas Where Mining is Prohibited, and replace it with new §12.71, relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited. The proposed new §12.71 adds subsection (b) which is an exception for existing operations to areas where surface coal mining operations are prohibited or limited.

The Commission proposes to repeal §12.72, relating to Procedures for Permit Application, and replace it with §12.72, relating to Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations. Proposed new subsection (c) explains which agency determines if there is a valid existing right and the process for determining if a valid existing right exists.

The Commission proposes to repeal §12.73, relating to Responsibility, and replace it with new §12.73, relating to Commission Obligations at Time of Permit Application Review. Proposed new §12.73 establishes the criteria to be used for rejection of any portion of an application containing protected lands and establishes procedures for joint approval of mining operations that will adversely affect publicly owned lands

The Commission proposes new §12.74, relating to Responsibility. This new section is merely a renumbering of the current §12.73, relating to Responsibility.

The Commission proposes amendments to §12.3 to remove the definition of Surface coal mining operations, which exist on the date of enactment, and to parallel the federal regulation 30 Code of Federal Regulations (CFR) §761.5. The proposed change to the definition of "valid existing rights" is intended to clarify the circumstances under which a valid existing right exists. As stated in Texas Natural Resources Code §134.012(d), the Commission is not authorized to adjudicate property title or property rights disputes. To demonstrate that a valid existing right exists, except for usage or construction of roads, a person must document that property rights existed on August 3, 1977, and must document compliance with one of the two standards listed in paragraph (187)(B). The two standards are the good faith/permits standard and the needed for and adjacent standard. Other definitions are renumbered as applicable.

The Commission proposes to amend §12.77, relating to exploration on land designated as unsuitable for Surface coal mining operations, by clarifying that lands listed under §12.71(a), relating to areas where Surface coal mining operations are prohibited or limited, are subject to designation as unsuitable for surface coal mining.

The Commission proposes to amend §12.111 and §12.112, to specify that the applicant shall demonstrate that the proposed exploration activities are designed to minimize interference with the value for which the lands were designated as unsuitable for Surface coal mining operations and document consultation with the owner of the feature that causes the land to come under §12.71(a) of this title.

The Commission proposes to amend §12.113, to add that notice also be sent to commenters.

The Commission proposes to amend §12.118 to include areas within 100 feet of a public road.

The Commission proposes to amend §§12.151, 12.152, 12.158, 12.191, 12.192, 12.207, and 12.216, to conform rule citations to other proposed changes.

Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, has determined that, during each year of the first five years the proposed repeals, amendments, and new sections are in effect, there will be no fiscal impacts to state or local governments as a result of their adoption. The new requirements applicable to the Commission will impose no new costs on the Commission. These rule amendments are largely housekeeping measures that are anticipated to have little practical effect in Texas, but which will keep the Texas program in compliance with the requirements of the Office of Surface Mining Reclamation and Enforcement, United States Department of Interior (OSM).

Mr. Hodgkiss has determined that, during each year of the first five years the proposed repeals, amendments, and new sections are in effect, there will be no discernable change in the cost of regulatory compliance to small businesses, micro-businesses, or

individuals. The proposed amendments to the rules regarding valid existing rights could have the effect of clarifying and thus streamlining the decision process. Cost savings resulting from these changes will vary from operator to operator and cannot be reliably predicted.

Mr. Hodgkiss has also determined that the public benefit from adoption of the proposed repeals, amendments, and new sections will be continued adherence to environmental protection standards in a more cost-effective fashion.

The Commission has not requested a local employment impact statement pursuant to Texas Government Code, §2002.022.

Comments on the proposed repeals, amendments and new sections should be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at http://www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us Comments will be accepted for 30 days after publication in the *Texas Register*. The Commission finds that a 30-day comment period is reasonable because these rules are required to keep the Texas program in compliance with the requirements of OSM. For further information, call Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, at (512) 463-6901. The status of Commission rulemakings in progress is available at http://www.rrc.state.tx.us/rules/proposed.html.

SUBCHAPTER A. GENERAL
DIVISION 1. GENERAL

16 TAC §12.3

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the proposed amendments.

Issued in Austin, Texas, on March 11, 2003.

§12.3. Definitions.

The following words and terms, when used in this Chapter (relating to Coal Mining Regulations), shall have the following meanings unless the context clearly indicates otherwise:

(1) - (168) (No change.)

~~[(169) Surface coal mining operations which exist on the date of enactment--All surface coal mining operations which were being conducted on August 3, 1977.]~~

(169) [~~(170)~~] Surface mining activities--Those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

(170) [~~(171)~~] Surface operations and impacts incident to an underground coal mine--All activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in §134.004(19) of the Act and the definition of surface coal mining operations contained in this section.

(171) [~~(172)~~] Suspended solids or nonfilterable residue--Expressed as milligrams per liter, organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. Environmental Protection Agency regulations for wastewater and analyses (40 CFR 136).

(172) [~~(173)~~] Temporary diversion--A diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the Commission to remain after reclamation as part of the approved postmining land use.

(173) [~~(174)~~] Temporary impoundment--An impoundment used during surface coal mining and reclamation operations, but not approved by the Commission to remain as part of the approved postmining land use.

(174) [~~(175)~~] Thick overburden--More than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

(A) closely resemble the surface configuration of the land prior to mining; or

(B) blend into and complement the drainage pattern of the surrounding terrain.

(175) [~~(176)~~] Thin overburden--Insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

(A) closely resemble the surface configuration of the land prior to mining; or

(B) blend into and complement the drainage pattern of the surrounding terrain.

(176) [~~(177)~~] Ton--2,000 pounds avoirdupois (0.90718 metric ton).

(177) [~~(178)~~] Topsoil--The A and E soil-horizon layers of the four master soil horizons.

(178) [~~(179)~~] Toxic-forming materials--Earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(179) [~~(180)~~] Toxic mine drainage--Water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(180) [~~(181)~~] Transfer, assignment, or sale of rights--A change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the Commission.

(181) [~~(182)~~] Unconsolidated streamlaid deposits holding streams--With respect to alluvial valley floors, all flood plains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than 3 feet in bankfull width and greater than 0.5 feet in bankfull depth.

(182) [~~(183)~~] Underground development waste--Waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of during development and preparation of areas incident to underground mining activities.

(183) [~~(184)~~] Underground mining activities--Includes:

(A) surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(B) underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

(184) [~~(185)~~] Undeveloped rangeland--For purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

(185) [~~(186)~~] Unwarranted failure to comply--The failure of the permittee to prevent the occurrence of any violation of the permit or any requirement of the Act, due to the indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act, due to indifference, lack of diligence, or lack of reasonable care.

(186) [~~(187)~~] Upland areas--With respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

(187) Valid existing rights--A set of circumstances under which a person may, subject to Commission approval, conduct surface coal mining operations on lands where §134.022 of the Act and §12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited) would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of §12.71(a) of this title and §134.022 of the Act. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Act and this chapter.

(A) Property rights demonstration. Except as provided in subparagraph (C) of this paragraph, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of §12.71(a) of this title or §134.022 of the Act. Applicable state statutory or case law will govern interpretation of documents relied upon to establish property rights. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

(B) Additional demonstrations. Except as provided in subparagraph (C) of this paragraph, a person claiming valid existing rights must also demonstrate compliance with one of the following standards:

(i) Good faith/all permits standard. All permits and other authorizations required to conduct surface coal mining operations have been obtained, or a good faith effort to obtain all necessary permits and authorizations has been made, before the land came under the protection of §12.71(a) of this title or §134.022 of the Act. At a minimum, an application must have been submitted for any permit required under Subchapter G of this chapter (relating to Surface Coal Mining and Reclamation Operations, Permits, and Coal Exploration Procedure Systems); or

(ii) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations have been obtained, or a good faith attempt to obtain all permits and authorizations has been made, before the land came under the protection of §12.71(a) of this title or §134.022 of the Act. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §12.71(a) of this title or §134.022 of the Act. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits have been made before August 3, 1977, this standard does not apply to lands already under the protection of §12.71(a) of this title or §134.022 of the Act when the Commission approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the Commission may consider factors such as:

(I) the extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of §12.71(a) of this title or §134.022 of the Act depend upon use of that land for surface coal mining operations;

(II) the extent to which plans used to obtain financing for the operation before the land came under the protection of §12.71(a) of this title or §134.022 of the Act rely upon use of that land for surface coal mining operations;

(III) the extent to which investments in the operation before the land came under the protection of §12.71(a) of this title or §134.022 of the Act rely upon use of that land for surface coal mining operations; and

(IV) whether the land lies within the area identified on the life-of-mine map submitted under §12.136(3) of this title (relating to Maps: General Requirements) or §12.182(3) of this title (relating to Maps: General Requirements) before the land came under the protection of §12.71(a) of this title.

(C) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by §12.71(a) of this title or §134.022 of the Act must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in this section:

(i) the road existed when the land upon which it is located came under the protection of §12.71(a) of this title or §134.022 of the Act, and the person has a legal right to use the road for surface coal mining operations;

(ii) a properly recorded right of way or easement for a road in that location existed when the land came under the protection

of §12.71(a) of this title or §134.022 of the Act, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations;

(iii) a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of §12.71(a) of this title or §134.022 of the Act; or

(iv) valid existing rights exist under subparagraphs (A) and (B) of this paragraph.

~~[(188) Valid existing rights--Includes:]~~

~~[(A) except for haul roads:]~~

~~*[(i)* those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the applicant to produce coal by a surface coal mining operation; and]~~

~~*[(ii)* the person proposing to conduct surface coal mining operations on such lands either:]~~

~~*[(I)* has been validly issued, on or before August 3, 1977, all state and federal permits necessary to conduct such operations on those lands; or]~~

~~*[(II)* can demonstrate to the Commission that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977;]~~

~~[(B) for haul roads, valid existing rights includes:]~~

~~*[(i)* A recorded right-of-way, recorded easement, or a permit for a coal haul road recorded as of August 3, 1977; or]~~

~~*[(ii)* Any other road in existence as of August 3, 1977; and]~~

~~[(C) interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon Texas case law concerning the interpretation of documents conveying mining rights. When no Texas case law exists, interpretation shall be based upon the usage and custom at the time and place where the document came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right.]~~

~~[(D) valid existing rights does not include mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. (Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a state or federal permit.)]~~

(188) [~~(189)~~] Valley fill--A fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20 degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

(189) [~~(190)~~] Violation, failure, or refusal--With respect to §§12.696 - 12.699 of this title, a violation of or a failure or refusal to comply with any order of the Commission including, but not limited to, a condition of a permit, notice of violation, failure-to-abate cessation order, imminent harm cessation order, order to show cause why a permit should not be suspended or revoked, and order in connection with a civil action for relief, except an order incorporated in a decision issued under §134.175 of the Act.

(190) [~~(191)~~] Violation notice--Any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

(191) [~~(192)~~] Water table--The upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(192) [~~(193)~~] Willfully--With respect to §§12.696 - 12.699 of this title, that an individual acted:

(A) either intentionally, voluntarily, or consciously; and

(B) with intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal.

(193) [~~(194)~~] Willful violation--An act or omission which violates the Act, state, or federal laws or regulations, or any permit condition required by the Act or this chapter, committed by a person who intends the result which actually occurs.

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

Filed with the Office of the Secretary of State on March 20, 2003.

TRD-200301845
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 475-1295

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SUBCHAPTER F. LANDS UNSUITABLE FOR MINING

DIVISION 2. AREAS DESIGNATED BY ACT OF CONGRESS

16 TAC §12.71, §12.72

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

The Commission proposes the repeals under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the proposed repeals.

Issued in Austin, Texas, on March 11, 2003.

§12.71. Areas Where Mining is Prohibited or Limited.
§12.72. Procedures.

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

Filed with the Office of the Secretary of State on March 20, 2003.

TRD-200301843
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 475-1295

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16 TAC §12.71, §12.72

The Commission proposes the new sections under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the proposed new sections.

Issued in Austin, Texas, on March 11, 2003.

§12.71. Areas Where Surface Coal Mining Operations are Prohibited or Limited.

(a) Surface coal mining operations may not be conducted on the following lands unless those lands either qualify for the exception for existing operations under subsection (b) of this section or are subject to valid existing rights, as determined under §12.72(c) of this title (relating to Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations):

(1) Any lands within the boundaries of:

(A) the National Park System;

(B) the National Wildlife Refuge System;

(C) the National System of Trails;

(D) the National Wilderness Preservation System;

(E) the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1276(a), or study rivers or study river corridors established in any guidelines issued under that Act; or

(F) National Recreation Areas designated by Act of Congress.

(2) Any federal lands within a national forest, except that this prohibition must not apply if the Secretary finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations, and:

(A) any surface operations and impacts will be incident to an underground coal mine; or

(B) with respect to lands that do not have significant forest cover within national forests west of the 100th meridian, the Secretary of Agriculture has determined that surface mining is in compliance with the Act, the Multiple-Use Sustained Yield Act of 1960, 16 U.S.C. 528-531; the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. 181 et seq.; and the National Forest Management Act of 1976, 16 U.S.C. 1600 et seq.

(3) Any lands where the operation would adversely affect any publicly owned park or any place listed in the National Register of Historic Places; however, this prohibition does not apply if, as provided in §12.73(d) of this title (relating to Commission Obligations at Time of Permit Application Review), the Commission and the federal, state or local agency with jurisdiction over the park or place jointly approve the operation.

(4) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except:

(A) where a mine access or haul road joins a public road, or

(B) when, as provided in §12.72(a) of this title, the Commission (or the appropriate public road authority designated by the Commission) allows the public road to be relocated or closed, or the area within the buffer zone to be affected by the surface coal mining operation, after:

(i) providing public notice and opportunity for a public hearing in accordance with §12.72(a)(3) of this title; and

(ii) finding in writing that the interests of the affected public and landowners will be protected.

(5) Within 300 feet, measured horizontally, of any occupied dwelling; except when:

(A) the owner of the dwelling has provided a written waiver consenting to surface coal mining operations within the protected zone, as provided in §12.72(b) of this title; or

(B) the part of the operation to be located closer than 300 feet to the dwelling is an access or haul road that connects with an existing public road on the side of the public road opposite the dwelling.

(6) Within 300 feet, measured horizontally, of any public building, school, church, community or institutional building, or public park.

(7) Within 100 feet, measured horizontally, of a cemetery; however, this prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and regulations.

(b) Exception for existing operations. The prohibitions and limitations of subsection (a) of this section do not apply to surface coal mining operations for which a valid permit, issued under Subchapter G of this chapter (relating to Surface Coal Mining and Reclamation Operations, Permits and Coal Exploration Procedures Systems), exists when the land comes under the protection of subsection (a) of this section; this exception applies only to lands within the permit area as it exists when the land comes under the protection of subsection (a) of this section.

§12.72. Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations.

(a) Procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road.

(1) This section does not apply to:

(A) lands for which a person has valid existing rights, as determined under subsection (c) of this section;

(B) lands within the scope of the exception for existing operations in §12.71(b) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited); and

(C) access or haul roads that join a public road, as described in §12.71(a)(4)(A) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited).

(2) All necessary approvals from the authority with jurisdiction over the road must be obtained for the following:

(A) relocation of a public road;

(B) closure of a public road; or

(C) surface coal mining operations proposed within 100 feet, measured horizontally, of the outside right-of-way line of a public road.

(3) Before approving an action proposed under paragraph (2) of this subsection, the Commission or a public road authority that it designates must determine that the interests of the public and affected landowners will be protected. Before making this determination, the Commission or designated authority must:

(A) provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation;

(B) if a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality; and

(C) based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If a hearing is held by the Commission or designated authority, the Commission or designated authority must make a written finding within 30 days after the hearing. If no hearing is held, the Commission or designated authority must make a written finding within 30 days after the end of the public comment period.

(b) Procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling.

(1) This section does not apply to:

(A) lands for which a person has valid existing rights, as determined under subsection (c) of this section;

(B) lands within the scope of the exception for existing operations in §12.71(b) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited); and

(C) access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in §12.71(a)(5)(B) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited).

(2) If surface coal mining operations are proposed to be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit application must include a written waiver by lease, deed, or other conveyance from the owner of the dwelling. The waiver must clarify that the owner and signatory have the legal right to deny mining and knowingly waived that right. The waiver will act as consent to surface coal mining operations within a closer distance of the dwelling as specified.

(3) If a valid waiver from the owner of an occupied dwelling to conduct operations within 300 feet of the dwelling was obtained before August 3, 1977, a new waiver does not need to be provided.

(4) If a valid waiver is obtained from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who have actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to state laws or if surface coal mining operations have entered the 300-foot zone before the date of purchase.

(c) Submission and processing of requests for valid existing rights determinations.

(1) Basic framework for valid existing rights determinations. The following table identifies the agency responsible for making a valid existing rights determination and the definition that it must use, based upon which part of §12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited) applies and whether the request includes federal lands.
Figure: 16 TAC §12.72(c)(1)

(2) Contents of requests for a valid existing rights determination. A request for a valid existing rights determination for any land other than federal land must be submitted to the Commission if the applicant intends to conduct surface coal mining operations on the basis of valid existing rights under §12.71(a) of this title or wishes to confirm the right to do so. This request may be submitted before preparing and submitting an application for a permit or boundary revision for the land.

(A) Requirements for property rights demonstration. A property rights demonstration must be provided under the definition of "valid existing rights" in §12.3(187)(A) of this title (relating to Definitions) if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in the definition of "valid existing rights" in §12.3(187)(B) of this title. This demonstration must include the following items:

(i) a legal description of the land to which the request pertains;

(ii) complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which the request pertains;

(iii) a complete chain of title for the surface and mineral estates of the land to which the request pertains;

(iv) a description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;

(v) a description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with state property law;

(vi) complete documentation of the nature and ownership, as of the date that the land came under the protection of §12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited) or §134.022 of the Act, of all property rights for the surface and mineral estates of the land to which the request pertains;

(vii) names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

(viii) if the coal interests have been severed from other property interests, documentation that the owners of other property interests in the land to which the request pertains has been notified and provided reasonable opportunity to comment on the validity of the applicant's property rights claims; and

(ix) any comments that are received by the applicant in response to the notification provided under clause (viii) of this subparagraph.

(B) Requirements for good faith/all permits standard. If the applicant's request relies upon the good faith/all permits standard in the definition of "valid existing rights" in §12.3(187)(B)(i) of this title, the information required under that clause must be submitted. The following information about permits, licenses, and authorizations for surface coal mining operations on the land to which the request pertains must also be submitted:

(i) approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant or a predecessor in interest obtained before the land came under the protection of §12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited) or §134.022 of the Act;

(ii) application dates and identification numbers for any permits, licenses, and authorizations for which the applicant or a predecessor in interest submitted an application before the land came under the protection of §12.71(a) of this title or §134.022 of the Act; and

(iii) an explanation of any other good faith effort that the applicant or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of §12.71(a) of this title or §134.022 of the Act.

(C) Requirements for needed for and adjacent standard. If the applicant's request relies upon the needed for and adjacent standard in the definition of "valid existing rights" in §12.3(187)(B)(i) of this title, the information required under subparagraph (A) of this paragraph must be submitted. In addition, the applicant must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §12.71(a) of this title or §134.022 of the Act.

(D) Requirements for standards for mine roads. If the applicant's request relies upon one of the standards for roads in the definition of "valid existing rights" in §12.3(187)(c)(i) - (iii) of this title, the applicant must submit satisfactory documentation that:

(i) the road existed when the land upon which it is located came under the protection of §12.71(a) of this title or §134.022 of the Act, and that the applicant has a legal right to use the road for surface coal mining operations;

(ii) a properly recorded right of way or easement for a road in that location existed when the land came under the protection of §12.71(a) of this title or §134.022 of the Act, and, under the document creating the right of way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or

(iii) a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of §12.71(a) of this title or §134.022 of the Act.

(3) Initial review of request regarding any land other than federal land.

(A) The Commission must conduct an initial review to determine whether the applicant's request includes all applicable components of the submission requirements of paragraph (2) of this subsection. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

(B) If the applicant's request does not include all applicable components of the submission requirements of paragraph (2) of this subsection, the Commission must notify the applicant and establish a reasonable time for submission of the missing information.

(C) When the applicant's request includes all applicable components of the submission requirements of paragraph (2) of this subsection, the Commission must implement the notice and comment requirements of paragraph (4) of this subsection.

(D) If the information requested by the Commission under subparagraph (B) of this paragraph is not provided within the time specified or as subsequently extended, the Commission must issue a determination that the applicant has not demonstrated valid existing rights, as provided in paragraph (5)(D) of this subsection.

(4) Notice and comment requirements and procedures.

(A) When the applicant's request satisfies the completeness requirements of paragraph (3) of this subsection, the Commission must publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. Alternatively, the Commission may require that the applicant publish this notice and provide the Commission with a copy of the published notice. Each notice must include:

(i) the location of the land to which the request pertains;

(ii) a description of the type of surface coal mining operations planned;

(iii) a reference to and brief description of the applicable standard(s) under the definition of "valid existing rights" in §12.3(187) of this title; and

(I) if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in the definition of "valid existing rights" in §12.3(187)(B) of this title, the notice also must include a description of the property rights claimed and the basis for that claim;

(II) if the request relies upon the standard in the definition of "valid existing rights" in §12.3(187)(C)(i) of this title, the notice also must include a description of the basis for the claim that the road existed when the land came under the protection of §12.71(a) of this title or §134.022 of the Act. In addition, the notice must include a description of the basis for the claim that the applicant has a legal right to use that road for surface coal mining operations;

(III) if the request relies upon the standard in the definition of "valid existing rights" in §12.3(187)(C)(ii) of this title, the notice must also include a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of §12.71(a) of this title or §134.022 of the Act. In addition, the notice must include a description of the basis for the claim that, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across the right-of-way or easement to conduct surface coal mining operations;

(iv) if the applicant's request relies upon one or more of the standards in the definition of "valid existing rights" in §12.3(187)(B), (C)(i), and (C)(ii) of this title, a statement that the Commission will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by subparagraph (C) of this paragraph, a person with a legal interest in the land initiates appropriate legal action to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the applicant's claim;

(v) a description of the procedures that the Commission will follow in processing the request;

(vi) the closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice;

(vii) a statement that interested persons may obtain a 30-day extension of the comment period upon request; and

(viii) the name and address of the Commission office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

(B) The Commission must promptly provide a copy of the notice required under subparagraph (A) of this paragraph to:

(i) all reasonably locatable owners of surface and mineral estates in the land included in the request; and

(ii) the owner of the feature causing the land to come under the protection of §12.71(a) of this title, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of §12.71(a) of this title. For example, both the landowner and the State Historic Preservation Officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the National Park Service must be notified if the request includes non-federal lands within the authorized boundaries of a unit of the National Park System.

(C) The letter transmitting the notice required under subparagraph (B) of this paragraph must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the Commission may grant additional time for good cause upon request. The Commission need not necessarily consider comments received after the closing date of the comment period.

(5) How a decision will be made.

(A) Procedure. The Commission must review the materials submitted under paragraph (2) of this subsection, comments received under paragraph (4) of this subsection, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the Commission must notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the agency deems necessary to remedy the inadequacy.

(B) Determination. Once the record is complete and adequate, the Commission must determine whether the applicant has demonstrated valid existing rights. The decision document must explain how the applicant has or has not satisfied all applicable elements of the definition of "valid existing rights" in §12.3(187) of this title. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

(C) Impact of property rights disagreements. This subparagraph applies only when the request relies upon one or more of the standards in the definition of "valid existing rights" in §12.3(187)(B), (C)(i) and (C)(ii) of this title.

(i) The Commission must issue a determination that the applicant has not demonstrated valid existing rights if those property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The Commission will make this determination without prejudice, meaning that an applicant may refile the request once the property rights dispute is finally adjudicated. This clause applies only to situations in which legal action has been initiated as of the closing date of the comment period under paragraph (4)(A) or (C) of this subsection.

(ii) If the record indicates disagreement as to the accuracy of property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the Commission must evaluate the merits of the information in the record and determine whether the applicant has demonstrated that the requisite property rights exist under the definition of "valid existing rights" in §12.3(187)(A), (C)(i) or (C)(ii) of this title, as appropriate. The Commission must then proceed with the decision process under subparagraph (B) of this paragraph.

(D) Default determination. The Commission must issue a determination that an applicant has not demonstrated valid existing rights if the information that is requested under paragraph (3)(B) of this subsection or subparagraph (A) of this paragraph has not been submitted within the time specified or as subsequently extended. The Commission will make this determination without prejudice, meaning that the applicant may refile a revised request at any time.

(E) Notice after decision. After making a determination, the Commission must:

(i) provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of §12.71(a) of this title, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §12.71(a) of this title; and

(ii) publish notice of the determination in a newspaper of general circulation in the county in which the land is located. Alternatively, the Commission may require that the applicant publish this notice and provide a copy of the published notice to the Commission.

(6) Administrative and judicial review. A determination that an applicant has or does not have valid existing rights is subject to administrative and judicial review under §12.222 and §12.223 of this title (relating to Administrative Review and Judicial Review).

(7) Availability of records. The Commission must make a copy of that request available to the public in the same manner as it must make permit applications available to the public under §12.210 of this title (relating to Public Availability of Information in Permit Applications On File With the Commission). In addition, the Commission must make records associated with that request, and any subsequent determination under paragraph (5) of this subsection, available to the public in accordance with the requirements and procedures of §12.672 of this title (relating to Availability of Records).

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

Filed with the Office of the Secretary of State on March 20, 2003.

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

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DIVISION 3. CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

16 TAC §12.73

(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 Commission proposes the repeal under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the proposed repeal.

Issued in Austin, Texas, on March 11, 2003.

§12.73. Responsibility.

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

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16 TAC §12.73, §12.74

The Commission proposes the new sections under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the proposed new sections.

Issued in Austin, Texas, on March 11, 2003.

§12.73. Commission Obligations at Time of Permit Application Review.

(a) Obligation. Upon receipt of an administratively complete application for a permit for a surface coal mining operation, or an administratively complete application for revision of the boundaries of a surface coal mining operation permit, the Commission must review the application to determine whether the proposed surface coal mining operation would be located on any lands protected under §12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited).

(b) Criteria for Rejection. The Commission must reject any portion of the application that would locate surface coal mining operations on land protected under §12.71(a) of this title unless:

(1) the site qualifies for the exception for existing operations under §12.71(b) of this title;

(2) a person has valid existing rights for the land, as determined under §12.72(c) of this title (relating to Procedures For Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, And Valid Existing Rights Determinations);

(3) the applicant obtains a waiver or exception from the prohibitions of §12.71(a) of this title in accordance with §12.72(a)-(b) of this title; or

(4) for lands protected by §12.71(a)(3) of this title, both the Commission and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with subsection (d) of this section.

(c) Location verification. If the Commission has difficulty determining whether an application includes land within an area specified in §12.71(a)(1) of this title or within the specified distance from a structure or feature listed in §12.71(a)(6) or (a)(7) of this title, the Commission must request that the federal, state, or local governmental agency with jurisdiction over the protected land, structure, or feature verify the location.

(1) The request for location verification must:

(A) include relevant portions of the permit application;

(B) provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request; and

(C) specify that the Commission will not necessarily consider a response received after the comment period provided under subparagraph (B) of this paragraph.

(2) If the agency does not respond in a timely manner, the Commission may make the necessary determination based on available information.

(d) Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places.

(1) If the Commission determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the Commission must request that the federal, state, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The request must:

(A) include a copy of applicable parts of the permit application;

(B) provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request; and

(C) state that failure to interpose an objection within the time specified under subparagraph (B) of this paragraph will constitute approval of the proposed operation.

(2) The Commission may not issue a permit for a proposed operation subject to paragraph (1) of this subsection unless all affected agencies jointly approve.

(3) Paragraphs (1) and (2) of this subsection do not apply to:

(A) lands for which a person has valid existing rights, as determined under §12.72(c) of this title; and

(B) lands within the scope of the exception for existing operations in §12.71(b) of this title.

§12.74. Responsibility.

The Commission must use the criteria in this Subchapter (relating to Lands Unsuitable for Mining) for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

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

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Mary Ross McDonald
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16 TAC §12.77

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the proposed amendments.

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§12.77. Applicability and Restrictions on Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations.

(a) Applicability. Pursuant to appropriate petitions, lands listed in §12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited) are subject to designation as unsuitable for all or certain types of Surface coal mining operations under this Division and Division 4 of Subchapter F (relating to Lands Unsuitable for Mining).

(b) Exploration Restrictions. Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to §§134.016-134.022 of the Act and regulations of this subchapter (relating to Lands Unsuitable for Mining) does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, this chapter (relating to Coal Mining Regulations), the approved state program and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the Commission under §§12.109-12.115 of this title (relating to General Requirements for Coal Exploration) to ensure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

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

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SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS

DIVISION 3. GENERAL REQUIREMENTS FOR COAL EXPLORATION

16 TAC §§12.111 - 12.113

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the proposed amendments.

Issued in Austin, Texas, on March 11, 2003.

§12.111. General Requirements: Exploration That Will Remove ~~of~~ More Than 250 Tons of Coal or That Will Occur on Land Designated as Unsuitable for Surface Coal Mining Operations.

Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under Subchapter F of this chapter (relating to Lands Unsuitable for Mining) shall, prior to conducting the exploration, submit an application and obtain the written approval of the Commission, in accordance with the following:

(1) Contents of application for approval. Each application for approval shall contain, at a minimum, the following information:

(A) - (E) (No change.)

(F) if the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation; [~~and~~]

(G) a statement of why extraction of more than 250 tons of coal is necessary for exploration; and[~~.~~]

(H) for any lands listed in §12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited), a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for Surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of §12.71(a) of this title, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §12.71(a) of this title.

(2) (No change.)

§12.112. Applications: Approval or Disapproval of Exploration of More Than 250 Tons of Coal or That Will Occur on Land Designated as Unsuitable for Surface Coal Mining Operations.

(a) (No change.)

(b) The Commission shall approve a complete application filed in accordance with §§12.109-12.111, this section, and §§12.113-12.115 of this title (relating to General Requirements for Coal Exploration), if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application:

(1) (No change.)

(2) will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; [~~and~~]

(3) will not adversely affect any cultural resources or districts, sites, buildings, structures, or objects listed or eligible for listing

on the National Register of Historic Places, unless the proposed exploration has been approved by both the Commission and the agency with jurisdiction over such matters; and

(4) with respect to exploration activities on any lands protected under §12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited Or Limited), minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the Commission must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of §12.71(a) of this title, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §12.71(a) of this title, to comment on whether the finding is appropriate.

(c) (No change.)

§12.113. Applications: Notice and Hearing for Exploration of More Than 250 Tons.

(a) The Commission shall notify the applicant and the appropriate local government officials, and other commenters on the application, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason[,] for disapproval. The Commission shall provide public notice of approval or disapproval of each application[,] by publication in a newspaper of general circulation in the general vicinity of the proposed operations.

(b) (No change.)

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

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DIVISION 4. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION, PART I

16 TAC §12.118

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the proposed amendments.

Issued in Austin, Texas, on March 11, 2003.

§12.118. Relationship to Areas Designated Unsuitable for Mining.

(a) Each application shall contain [~~a statement of~~] available information on whether the proposed permit area is within an area designated unsuitable for surface coal mining and reclamation or is within an area under study for designation in an administrative proceeding [~~activities~~] under §§12.74-12.77 of this title (relating to Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations) and §§12.78-12.85 of this title (relating to Process for Designating Areas as Unsuitable for Surface Coal Mining Operations) [~~or under study for designation in an administrative proceeding~~].

(b) (No change.)

(c) If an applicant proposes to conduct surface mining activities within 100 feet of a public road or within 300 feet of an occupied dwelling, the application must meet the requirements of §12.72(a) or (b) of this title (relating to Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations) [~~shall contain the waiver of the owner of the dwelling as required in §12.72(f) of this title (relating to Procedures)~~].

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

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DIVISION 6. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

16 TAC §12.151, §12.152

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the proposed amendments.

Issued in Austin, Texas, on March 11, 2003.

§12.151. Protection of Public Parks and Historic Places.

(a) For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used:

(1) to prevent adverse impacts; or

(2) if a person has valid existing rights as determined under §12.72(c) of this title (relating to Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations), or if joint agency approval is to be obtained under §12.73(d) of this title (relating to Commission Obligations at Time of Permit Application Review), to minimize adverse impacts.

[~~(2) if valid existing rights or joint agency approval is to be obtained under §12.72(g) of this title (relating to Procedures), to minimize adverse impacts.~~]

(b) (No change.)

§12.152. Relocation or Use of Public Roads.

Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under §12.72(a) of this title (relating to Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations) [~~§12.72(e) of this title~~], the applicant seeks to have the Commission approve:

(1) conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) relocating a public road.

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

Filed with the Office of the Secretary of State on March 20, 2003.

TRD-200301851
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 475-1295

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DIVISION 7. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION, PART II

16 TAC §12.158

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the proposed amendments.

Issued in Austin, Texas, on March 11, 2003.

§12.158. Relationship to Areas Designated Unsuitable for Mining.

(a) Each application shall contain [~~a statement of~~] available information on whether the proposed permit area is within an area designated unsuitable for surface coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding [~~underground mining activities~~] under §§12.74-12.77 of this title (relating to Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations) and §§12.78-12.85 of this title (relating to Process for Designating Areas as Unsuitable for Surface Coal Mining Operations) [~~Operations or under study for designation in an administrative proceeding~~].

(b) (No change.)

(c) An application that proposes to conduct Surface coal mining operations within 100 feet of a public road or within 300 feet of an occupied dwelling must meet the requirements of §12.72(a) or (b) of this title (relating to Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations), respectively. [~~If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in §12.72 of this title (relating to Procedures).~~]

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

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

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DIVISION 9. UNDERGROUND MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

16 TAC §12.191, §12.192

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the proposed amendments.

Issued in Austin, Texas, on March 11, 2003.

§12.191. Protection of Public Parks and Historic Places.

(a) For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used:

(1) to prevent adverse impacts; or

(2) If a person has valid existing rights as determined under §12.72(c) of this title (relating to Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations), or if joint agency approval is to be obtained under §12.73(d) of this title (relating to Commission Obligations at Time of Permit Application Review), to minimize adverse impacts.

[~~(2) if valid existing rights or joint agency approval is to be obtained under §12.72(g) of this title (relating to Procedures), to minimize impacts.~~]

(b) (No change.)

§12.192. Relocation or Use of Public Roads.

Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under §12.72(a) of this title (relating to Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations) [~~§12.72 of this title (relating to Procedures)~~], the applicant seeks to have the Commission approve:

(1) conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) relocating a public road.

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

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 475-1295

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DIVISION 11. REVIEW, PUBLIC PARTICIPATION, AND APPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS

16 TAC §12.207, §12.216

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the proposed amendments.

Issued in Austin, Texas, on March 11, 2003.

§12.207. Public Notices of Filing of Permit Applications.

(a) An applicant for a permit shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operations at least once a week for four consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the Commission. The advertisement shall contain, at a minimum, the following information:

(1) - (4) (No change.)

(5) if an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing has previously been provided for this particular part of the road in accordance with §12.72(a) of this title (relating to Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations), a concise statement describing the public road, the particular part to be relocated or closed, where the relocation or closure is to occur, and the duration of the relocation or closure.

(b) (No change.)

(c) The written notifications shall be sent to:

(1) The following State and federal agencies:

(A) Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality;

(B) - (I) (No change.)

(2) - (5) (No change.)

(d) (No change.)

§12.216. Criteria for Permit Approval or Denial.

No permit or revision application shall be approved, unless the application affirmatively demonstrates and the Commission finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that:

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

(4) the proposed permit area is:

(A) not included within an area designated unsuitable for surface coal mining operations under §§12.74-12.77 of this title (relating to Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations) and §§12.78-12.85 of this title (relating to Process for Designating Areas as Unsuitable for Surface Coal Mining Operations) or within an area subject to the prohibitions of §12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited); or

(B) not within an area under study for designation as unsuitable for surface coal mining operations or in an administrative proceeding begun under §§12.78-12.85 of this title (relating to Process for Designating Areas as Unsuitable for Surface Coal Mining Operations), unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit; or

(C) not on any lands subject to the prohibitions or limitations of §12.71(a)(1), (a)(6) or (a)(7) of this title [~~§12.71(1), (6), or (7) of this title (relating to Areas Where Mining is Prohibited or Limited)~~]; or

(D) not within 100 feet of the outside right-of-way line of any public road, except as provided for in §12.72(a) of this title (relating to Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations) [~~§12.72(e) of this title (relating to Procedures)~~]; or

(E) not within 300 feet from any occupied dwelling, except as provided for in §12.71(a)(5) of this title [~~§12.71(5) of this title (relating to Areas Where Mining Is Prohibited or Limited) and §12.72(f) of this title (relating to Procedures)~~];

(5) the proposed operations will not adversely affect any properties listed on and eligible for listing on the National Register of Historic Places, except as provided for in §12.71(a)(3) of this title [~~§12.71(3) of this title (relating to Areas Where Mining Is Prohibited or Limited)~~]. This finding may be supported in part by inclusion of appropriate permit conditions, revisions in the operation plan, or a documented decision by the Commission that no additional protection measures are required under the National Historic Preservation Act;

(6) - (15) (No change.)

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

Filed with the Office of the Secretary of State on March 20, 2003.

TRD-200301854
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 2. RECOVERY OF STRANDED COSTS

16 TAC §25.263

The Public Utility Commission of Texas (commission) proposes an amendment to §25.263, relating to True-Up Proceeding. The proposed amendment will implement the provisions of Public Utility Regulatory Act (PURA) §39.262, which sets forth the requirements for the final true-up of stranded costs.

The commission proposes to amend §25.263 by modifying subsection (d)(1) to establish the true-up filing schedule required by PURA §39.262(c). As more fully discussed below, the proposed schedule is based upon staff's assessment of available resources, the complexity of the true-up filings, and factors related to each filing company's specific circumstances.

The proposed true-up filing date for Centerpoint Energy Houston, LLC (Centerpoint), Reliant Energy Retail Service, LLC, and Texas Genco, LP is January 12, 2004. This date is effectively consistent with the date specified in PURA §39.262(c) as the date after which true-up filings may begin and it is also consistent with Reliant Resources, Inc.'s option, exercisable in January 2004, to purchase the shares of Texas Genco common stock owned by Centerpoint. If the timing of Centerpoint's true-up filing is different from the date used to establish the option purchase price, Centerpoint will be exposed to uncertainty regarding full recovery of its stranded costs. Additionally, given the potential magnitude of its stranded costs, a filing date of January 12, 2004 is proposed for Centerpoint because its stranded-cost proceeding will likely be the most thoroughly litigated of all the true-up filings and, consequently, will likely require the greatest amount of resources.

For Texas-New Mexico Power Company (TNMP) and First Choice Power, Inc., the proposed true-up filing date is March 31, 2004. This date is approximately two and one- half months after Centerpoint's proposed filing date and thus allows much of the processing in that case to have been completed. TNMP has already sold its generation assets, and the apparent amount of TNMP's stranded costs is considerably smaller than that of the other companies filing for stranded-cost recovery. Additionally, some elements of the true-up proceeding will not be at issue in TNMP's filing (e.g., the capacity auction true-up adjustment, potential inclusion of control premium, etc.). For these reasons, the amount of resources required for TNMP's true-up filing is not expected to be as great as that of the other stranded-cost companies.

For AEP Texas North Company and Mutual Energy WTU, LP, the proposed true-up filing date is May 28, 2004. This date is proposed because it allows a number of months to pass after the filing of the previous cases and thus allows much of the processing of those cases to have been completed. Additionally, AEP Texas North Company will not be filing for stranded-cost recovery; the only two true-up items for AEP Texas North Company and Mutual Energy WTU, LP are the "retail clawback" calculation required by PURA §39.262(e) and the final fuel reconciliation. The expected amounts at stake for these two items, in comparison to the amounts for all true-up elements in the other companies' true-up filings, are not expected to be significant. Accordingly, the resources required for this true-up filing are not likely to be substantial.

For AEP Texas Central Company (AEP Central) and Mutual Energy CPL, LP, the proposed filing date is September 3, 2004. This relatively late filing date is essentially based upon AEP Central's specific circumstances -- that is, this date reflects the fact that AEP Central has not yet definitively determined whether the market valuation of its generation assets will occur by the sale of the assets or by the issuance of stock pursuant to a stock valuation or partial stock valuation methodology. In Docket Number 27120, *Petition of Central Power and Light Company for Declaratory Order and Approval of Plan of Divestiture*, in which AEP Central (formerly Central Power and Light Company) sought a declaratory order approving its right to sell nuclear assets for purposes of stranded-cost determination, AEP Central estimated that if it uses the sale methodology, the time required for sale of all its generation assets will be approximately 18 months. Alternatively, if AEP Central ultimately uses one of the stock valuation methodologies allowed by PURA §39.262(h)(2) or (h)(3), the time required for the issuance of any stock coupled with the subsequent one-year minimum trading period will be approximately the same 18-month period required by the sale process. Simply as a practical matter, therefore, the proposed true-up filing date for AEP Central must reflect an approximate 18-month time period because the company will not have a market valuation of its generation assets before that time. Accordingly, the proposed filing date for AEP Central and Mutual Energy CPL, LP is September 3, 2004.

Darryl Tietjen, Director of Financial Analysis, Financial Review Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Tietjen has also determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be an orderly determination of the final reconciliation of certain amounts due to the unbundled successors-in-interest of deregulated electric utilities. There will be no effects on small businesses or micro-businesses as a result of enforcing this section. There will be no economic costs to persons who are required to comply with the proposed amendment. The proposed amendment merely sets up a schedule upon which the persons required to comply will discharge existing duties under PURA §39.262.

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

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments

may be submitted within 40 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 27401.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.252, which addresses a utility's right to recover stranded costs, and PURA §39.262, which requires the commission to conduct a true-up proceeding for each investor-owned electric utility after the introduction of customer choice and which prohibits over-recovery of stranded costs.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.252 and 39.262.

§25.263. True-up Proceeding.

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

(d) Obligation to file a true-up proceeding.

(1) Each TDU, its APGC, and its AREP shall jointly file [~~after January 12, 2004, on a schedule to be determined by the commission,~~] a true-up application pursuant to subsection (e) of this section according to the following schedule.

(A) Centerpoint Energy Houston, LLC, Reliant Energy Retail Service, LLC, and Texas Genco, LP -- not earlier than January 12, 2004, and not later than ten days thereafter;

(B) Texas-New Mexico Power Company and First Choice Power, Inc. -- not earlier than March 31, 2004, and not later than ten days thereafter;

(C) AEP Texas North Company and Mutual Energy WTU, LP -- not earlier than May 28, 2004, and not later than ten days thereafter;

(D) AEP Texas Central Company and Mutual Energy CPL, LP -- not earlier than September 3, 2004, and not later than ten days thereafter.

(E) Notwithstanding the schedule in subparagraphs (A) - (D) of this paragraph, the commission may allow a company, upon a showing of good cause, to file its true-up application on a different date.

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

(e) - (n) (No change.)

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

Filed with the Office of the Secretary of State on March 21, 2003.

TRD-200301866
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 936-7223

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16 TAC §25.264

The Public Utility Commission of Texas (commission) proposes new §25.264, relating to Quantification of Stranded Costs of Nuclear Generation Assets. The proposed new rule will clarify the methods that are available to an electric utility and its affiliated power generation company to quantify the market value of its nuclear generation assets for the purpose of determining its stranded costs under the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapter 39 (Vernon 1998, Supplement 2003) (PURA). In Docket Number 27120, *Petition of Central Power and Light Company for Declaratory Order and Plan of Divestiture*, the commission denied a request by AEP Texas Central Company (previously known as Central Power and Light Company) for a declaratory order interpreting the provisions of PURA Chapter 39 related to the stranded cost calculation for nuclear assets. The commission determined that it was more appropriate to address the issue in a rulemaking proceeding and established this project for that purpose. Project Number 27464 is assigned to this proceeding.

Patrick J. Sullivan, Attorney, Legal and Enforcement Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Sullivan has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to firmly establish the methods that may be employed to determine the stranded cost of nuclear power generation assets. In addition, the rule is needed to serve the public interest and legislative policy stating that utilities with uneconomic generation-related assets should be allowed to recover the reasonable excess costs over market value of those assets. In order to assure that the market value of nuclear generation assets is properly quantified in a manner that reduces, to the extent possible, the amount of excess costs over market value for those assets, the rule clarifies that a public utility and its affiliated companies may use any of the valuation methods specified in PURA §39.262(h) and (i) to quantify the market value of nuclear generation assets. The rule is proposed as part of the commission's efforts to adopt competitive rules to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry under PURA Chapter 39. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the legislative history of the portions of PURA detailing the determination of stranded costs of nuclear generation assets. All comments should refer to Project Number 27464.

The commission staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices located in the

William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on April 29, 2003 at 9:00 a.m. Interested persons are invited to comment on the rule at that time and to offer oral reply comments to the initial comments filed in this project.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.252, which allows an electric utility to recover all of its net, verifiable, nonmitigable stranded costs in purchasing power and providing electric generation service; PURA §39.262(a), which provides that an electric utility and its affiliates may not be permitted to overrecover its stranded costs; PURA §39.262(c), which directs each transmission and distribution utility, its affiliated retail electric provider, and its affiliated power generation company to jointly file an application to finalize its stranded costs under procedures to be determined by the commission; and PURA §39.262(h) and (i), which establish the methods by which the final stranded costs shall be calculated.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.252 and 39.262.

§25.264. Quantification of Stranded Costs of Nuclear Generation Assets.

The market value of an affiliated power generation company's nuclear assets shall be established by compliance with any of the four methods of quantification specified in Public Utility Regulatory Act §39.262(h) and related requirements specified in §25.263 of this title (relating to True-up Proceeding). For any nuclear assets that are not valued pursuant to a sale of assets or an exchange of assets, the electric utility or its affiliated power generation company shall either combine those assets in one or more transferee corporations as described in PURA §39.262(h)(2) and (3) for purposes of determining their market value, or the commission will determine their market value using the "excess costs over market" or ECOM method.

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

Filed with the Office of the Secretary of State on March 21, 2003.

TRD-200301880
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 936-7308

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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 280. THERAPEUTIC OPTOMETRY

22 TAC §280.5

The Texas Optometry Board proposes amendments to §280.5, concerning Prescription and Diagnostic Drugs for Therapeutic Optometry in order to incorporate changes made in the Texas Pharmacy Act regarding dispensing instructions to pharmacies on product substitution. Amendments by the Pharmacy Board to 22 TAC §309.3 have been incorporated into §280.5 so that licensees of the Board may be in compliance with the Texas Pharmacy Act. The proposed amendments correct requirements for written, electronically, and verbally transmitted prescriptions. Citations to the Optometry Act have also been corrected.

Chris Kloeris, Executive Director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments is that the public will receive from their pharmacists the drugs as prescribed by their therapeutic optometrist. It has also been determined that the amendments will not impose any additional costs to the persons affected by the rule since existing prescription forms may still be used. No additional costs are foreseen for small or micro business.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and the Texas Pharmacy Act §562.015. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession and §562.015 as authorizing the board to direct licensees to follow statutory dispensing directives for the communication of substitution instructions to pharmacists.

No other section is affected by the amendments.

§280.5. Prescription and Diagnostic Drugs for Therapeutic Optometry.

(a) A therapeutic optometrist may administer and prescribe any drug authorized by §351.358(a) and (b)(1) of the [~~Texas Optometry~~] Act [~~Articles 4552-1.02 and 1.03, as amended by House Bill 1051, 76th Legislature, Regular Session~~].

(b) To prohibit substitution of a generically equivalent drug product on a written prescription drug order, a therapeutic optometrist must write across the face of the written prescription, in the therapeutic optometrist's own handwriting, "brand necessary" or "brand medically necessary." [~~As specified in the Texas Pharmacy Act (§562.008 and §563.002, Texas Occupations Code), written prescriptions shall be on a form which contains two signature lines of equal prominence, side by side, at the bottom of the form. Under either signature line shall be printed clearly the words "product selection permitted", and under the other signature line shall be printed clearly the words "dispense as written." A therapeutic optometrist shall communicate dispensing instructions to a pharmacist by signing on the appropriate line.~~] If the therapeutic optometrist does not clearly indicate "brand necessary" or "brand medically necessary," [~~that the prescription drug shall be dispensed as ordered,~~] the pharmacist may substitute a generically equivalent drug product in compliance with the Texas Pharmacy Act, §562.008 and §563.002 of the Texas Occupations Code, and §309.3 of this title.

(c) (No change.)

(d) The prescribing therapeutic optometrist issuing verbal or electronic [~~oral~~] prescription drug orders to a pharmacist shall furnish the same information required for a written prescription, except for

the written signature. If the therapeutic optometrist does not clearly indicate [~~that the prescription drug shall be dispensed as ordered by writing across the face of the written prescription, in the therapeutic optometrist's own handwriting, the phrase~~] "brand necessary" or "brand medically necessary," when communicating the prescription to the pharmacist, the pharmacist may substitute a generically equivalent drug product in compliance with the Texas Pharmacy Act and §309.3 of this title.

(e) - (j) (No change.)

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

Filed with the Office of the Secretary of State on March 18, 2003.

TRD-200301799
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 305-8502

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 27. CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN

25 TAC §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13, 27.15

The Texas Department of Health (department) proposes new §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13 and 27.15, concerning case management for children and pregnant women. Specifically, these new sections cover definitions; eligible recipients; case management service provisions; service limitations; applicant and provider qualifications; application; case management provider review and monitoring processes.

The proposed new rules for Case Management for Children and Pregnant Women will provide case management services to Medicaid eligible women of all ages who have a high risk pregnancy and to children from birth to 21 years of age with a health condition/health risk. The programs, Medicaid Case Management for High Risk Pregnant Women and High Risk Infants and the Texas Health Steps Medical Case Management will become one program due to the proposed repeal of §§32.301 - 32.305, 32.307, 33.501 - 33.506, and 37.81 - 37.86 of this title and will become proposed new sections of Chapter 27. The new program will provide a greater continuity of services for all eligible recipients.

New §27.1 covers definitions and includes language from proposed repealed §33.501 and proposed repealed §37.82. New §27.3 covers eligible recipients and includes language from proposed repealed §33.502 and proposed repealed §37.82. New §27.5 covers Case Management for Children and Pregnant Women's services and includes language from proposed repealed §33.503 and proposed repealed §37.83. New §27.7 covers service limitations and includes language from proposed repealed §33.504. New §27.9 covers applicant qualifications and includes language from proposed repealed §33.505 and proposed repealed §37.84. New §27.11 covers provider requirements and includes language from proposed repealed §33.505 and proposed repealed §37.84. New §27.13 covers application processes and includes language from proposed repealed §33.506 and proposed repealed §37.85. New §27.15 covers case management provider review and monitoring process and includes language from proposed repealed §33.506 and proposed repealed §37.85.

The department also proposes the repeal of §§32.301 - 32.305 and §32.307, concerning case management for high risk pregnant women and high risk infants. Specifically these sections cover definitions; eligible individuals; case management services; service limitations; provider qualifications and the right to appeal. These sections are being proposed for repeal as they are repeated in §§37.81 - 37.86. Sections 32.301 - 32.305 and 32.307 were not repealed when §§37.81 - 37.86 were adopted.

The department further proposes repeal of Early and Periodic Screening, Diagnosis, and Treatment, Subchapter J, Texas Health Steps Medical Case Management §§33.501 - 33.506. Specifically, these sections cover definitions; eligible recipients; THSteps Medical Case Management Services; service limitations; applicant and provider qualifications; application, review and monitoring process. These sections are being proposed for repeal in an effort to integrate services to the eligible population for case management services: children with a health condition/health risk birth to 21 years and/or high risk pregnant women of all ages.

The department at the same time is proposing the repeal of §§37.81 - 37.86, concerning Medicaid case management for high risk pregnant women and high risk infants. Specifically, these sections cover introduction; definitions; case management services; provider qualifications; application and review process; and documents adopted by reference. Pertinent portions of the proposed repealed sections will be integrated in proposed new Chapter 27 of this title.

The department provides health services to women and children in Texas under the authority of the Health and Safety Code, Chapter 32; the State Appropriations Act; and the Social Security Act, Title V. The Targeted Case Management Program for High Risk Pregnant Women and High Risk Infants was established under the authority of the Social Security Act, Title XIX, §1915(g). Section 1915(g) authorized states to provide case management as a distinct service to targeted populations, through a waiver from the Health Care Financing Administration (HCFA), now the Centers for Medicare and Medicaid Services or CMS. The Health and Human Services Commission (HHSC) provides authority to the department to propose rules to administer certain Medicaid program services in Texas. Human Resources Code, §22.0031, mandates case management for high-risk pregnant women and high-risk children to age one as provided under §1915(g) of the federal Social Security Act (42 U.S.C. §1396n). Case management for children up to age 21 is authorized under 42 U.S.C. §1396d.

The Government Code, §531.021, provides HHSC with the authority to propose rules to administer the state's medical assistance program. The Texas Department of Health submitted the current rules under its agreement with HHSC to operate the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, and as authorized under Acts 1991, 72nd Legislature, First Called Session, Chapter 15, §1.07. In Texas, the EPSDT program is known as Texas Health Steps (THSteps). The purpose of these sections is to make available medically necessary

THSteps medical case management services mandated by the federal EPSDT program.

Ravi Rupsingh, M.P.A., Actuary, Actuary Analysis, HHSC, has determined for the first five years the sections are in effect, there will be cost savings to the state through the combination of the two programs as described in this preamble. Total cost savings per year are $1,724,820, $6,153,493, $6,348,526, $6,549,411 and $6,745,893 in state fiscal years 2003, 2004, 2005, 2006 and 2007, respectively, for a total of $27,522,143 over these five state fiscal years. There will be no impact on local government.

Duane Thomas, Ph.D., Texas Department of Health, Director of Regional Case Management has also determined that for each of the first five years the sections are in effect, anticipated public benefits include better access to primary care providers, preventative health services, other health services and community resources for children and pregnant women accessing the services. There will be costs to small businesses and micro-businesses. This was determined after concluding that the elimination of the Intake as a billable contact for Targeted Case Management for Pregnant Women and Infants providers will decrease the amount of reimbursement that these providers currently receive. The cost to small and micro-businesses for the first year of implementation is estimated to be $7,327 while the cost to large businesses for the first year of implementation is estimated to be $7,281. The estimated costs are based on the assumption that 70% of Targeted Case Management for Pregnant Women and Infants providers are large businesses and 30% of providers are small or micro-businesses. There will be no anticipated economic costs to persons who receive the services. The department has determined that the proposed rules do not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking under Government Code, §2007.043.

Comments on the proposal may be submitted to Cossy Hough, LMSW-ACP, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 6664. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

A public hearing regarding these proposed rules will be held on April 8, 2003, from 1:00 p.m. to 4:00 p.m. at the Texas Department of Health, Moreton Building, Room M-739, 1100 West 49th Street, Austin, Texas 78756.

The new sections are proposed under the Health and Safety Code, §12.001, which provides the Board of Health (board) with the authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health; and under the Health and Safety Code, Chapter 32, which provides the board with the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; the Human Resources Code, §22.0031, which mandates case management for high risk pregnant women and high risk infants under §1915(g) of the federal Social Security Act (42 U.S.C. §1396n); the Human Resources Code, Chapter 32, which enables the state to provide medical assistance; the Government Code, §531.021, which provides HHSC with the authority to propose rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with HHSC to operate the EPSDT program, and as authorized under §1.07 of the Acts of the 72nd Legislature, First Called Session (1991), Chapter 15, as amended by the Acts of the 73rd Legislature, Chapter 747, §2.

The proposed new sections affect the Health and Safety Code, Chapter 32, the Human Resources Code, §22.0031 and Chapter 32.

§27.1. Definition of Terms.

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

(1) Access--The ability of an eligible recipient to obtain health and health-related services, as determined by factors such as: the availability of THSteps services; service acceptability to the eligible child, family, and/or pregnant woman; the location of health care facilities and other resources; transportation; hours of facility operation and length of time available to see the healthcare provider.

(2) Applicant--An agency, organization, or individual who submits an application to the department to provide Case Management for Children and Pregnant Women under this subchapter and who meets the applicant qualifications and requirements as stated in §27.9 and §27.11 of this title (relating to Applicant Qualifications and Case Management Provider Requirements).

(3) Application process--Submission of an application to provide Case Management for Children and Pregnant Women and the department's ensuing review and disposition of the application.

(4) Billable contact--A documented Comprehensive Visit or Follow-up contact with an eligible recipient, by an approved case manager who provides an eligible case management service, as defined in §27.5 of this title (relating to Case Management and Pregnant Women).

(5) Board--The Texas Board of Health.

(6) Case manager--An individual who provides Case Management for Children and Pregnant Women services either independently or as an employee of a Case Management Provider.

(7) Case management provider--An agency or individual approved by the department to provide Case Management for Children and Pregnant Women Services and enrolled as a Medicaid provider.

(8) Case Management for Children and Pregnant Women--The federal enhancement service which assists eligible recipients in gaining access to medically necessary medical, social, educational, and other services.

(9) Children with a health condition/health risk--Children who have or are at risk for a medical condition, illness, injury, or disability that results in limitation of function, activities or social roles in comparison with healthy age peers in the general areas of physical, cognitive, emotional, or social growth and development.

(10) Continuity of care--The degree to which: the care of a child is provided by the same medical home or primary care provider; the system of care remains stable and services are consistent, unduplicated and uninterrupted.

(11) Department--The Texas Department of Health.

(12) EPSDT--Early and Periodic Screening, Diagnosis and Treatment program. All states participating in the Medicaid program must offer EPSDT to children under age 21 who qualify for Medicaid. EPSDT provides medical and dental services to Medicaid and Texas Health Steps clients under age 21 years. In Texas, EPSDT is known as Texas Health Steps (THSteps).

(13) Family--A basic unit in society having at its nucleus: one or more adults living together and cooperating in the care and rearing of their own or adopted children; a person or persons acting as the

family of an individual; a foster family or identifiable support person or persons.

(14) Health and health-related services--Services which are provided to meet the comprehensive (preventive, primary, tertiary and specialty) health needs of the eligible recipient, including but not limited to, well care and dental check ups, immunizations, acute care visits, pediatric specialty consultations, physical therapy, occupational therapy, audiology, speech language services, mental health professional services, pharmaceuticals, medical supplies, prenatal care, family planning, adolescent preventive health, durable medical equipment, nutritional supplements, prosthetics, eye glasses, and hearing aids.

(15) High risk pregnant women--Women who are pregnant and have one or more high-risk medical and/or personal/psychosocial condition(s) during pregnancy.

(16) Preventive services--Services that include health counseling and education, immunizations, wellness care, nutritional supplementation, family planning and screening aimed at avoiding illness and/or disability.

(17) Primary services--Services that include care for minor illnesses, injuries and abnormalities discovered through screenings.

(18) State--The State of Texas.

(19) Tertiary services--Services that include care for major illnesses and injuries, and chronic or disabling conditions.

(20) Texas Health Steps Program (THSteps)--In Texas, the federal program known as EPSDT, which is required of states participating in the Medicaid program, is called Texas Health Steps.

§27.3. Eligible Recipients.

Clients eligible for case management services under this subchapter must be either children with a health condition/health risk or high-risk pregnant women who are:

(1) Medicaid eligible in Texas;

(2) in need of services to prevent illness(es) or medical condition(s), to maintain function or slow further deterioration; and

(3) desire case management.

§27.5. Case Management for Children and Pregnant Women.

Case Management for Children and Pregnant Women's services, as defined in §27.1 of this title (relating to Definitions), are provided to assist eligible recipients in gaining access to medically necessary medical, social, educational and other services for which federal financial participation is available in order to: encourage the use of cost-effective health and health-related care; make referrals to appropriate community resources; discourage over utilization or duplication of services; and reduce morbidity and mortality. Case Management for Children and Pregnant Women is not a "gatekeeper" function.

(1) The following contacts are billable:

(A) Comprehensive Visit--a face-to-face visit that includes the development of:

(i) Family Needs Assessment--a written evaluation of all issues that impact the short and long term health and well being of the eligible recipient and his/her family. Together, the case manager and family shall assess the medical, social, educational and other medically necessary service needs of the eligible recipient. Documentation of the Family Needs Assessment should include, at a minimum:

(I) the assessment of the medical, social/family, nutritional, educational, vocational, developmental and health care transportation needs;

(II) individualized assessment of the client; and

(III) the case manager's dated signature.

(ii) Service Plan--the written summary which:

(I) documents the services to be accessed;

(II) identifies the individual responsible for contacting the appropriate health and human service providers;

(III) designates the time frame within which the eligible recipient should access services;

(IV) may be sent to the medical provider or others as appropriate in accordance with the limits of confidentiality;

(V) includes, at a minimum: the interventions and referrals for addressing needs identified in the Family Needs Assessment; the time frame for the client to access services; the client/parent/guardian's and case manager's dated signatures.

(B) Follow-up contact--a face-to-face or telephone contact with the eligible recipient and his/her family. The case manager and the client/family review and reassess the client/family's needs, determine what referrals and services specified in the Service Plan have been received by the client/family, and develop appropriate modifications to the Service Plan. The Follow-up contact includes the review of the referrals that have occurred or are still needed to complete the Service Plan and meet the client/family's needs. Follow-up contacts for children should occur as needed. Follow-up contacts for pregnant women should occur as needed through the 59th day post partum. Documentation of the Follow-up contacts should include, at a minimum:

(i) a review of complete Service Plan;

(ii) efforts to ascertain on an ongoing basis which needs specified in the Service Plan have been addressed with appropriate referrals provided and services accessed; and

(iii) evidence of problem solving with client/parent/guardian when needs are not addressed or referrals not accessed.

(2) Case Management for Children and Pregnant Women services will include a non-billable intake with each client/family. The intake will include the collection of demographic information and determination of the client's eligibility.

(3) Only one billable contact per client shall be billed per day.

§27.7. Service Limitations.

(a) Case Management for Children and Pregnant Women services are not reimbursable if they are duplicative of other billed, comprehensive Medicaid case management services.

(b) Following intake completion, the initial prior authorization request for billable Case Management for Children and Pregnant Women services must be supported by required documentation and submitted to the department for review and disposition. The amount of Comprehensive Visits and Follow-up contacts that are prior authorized will be based on the client's level of need, level of medical involvement and complicating psychosocial factors.

(c) Any additional requests for Case Management for Children and Pregnant Women services must also be prior authorized. Required documentation must be submitted to the department for review and disposition before any additional services may be prior authorized.

§27.9. Applicant Qualifications.

(a) The minimum qualifications for a Case Management for Children and Pregnant Women applicant are:

(1) completion and approval of an application for Case Management for Children and Pregnant Women as defined in §27.1 of this title (relating to Definitions);

(2) agreeing to comply with the department rules, policies and procedures on Case Management for Children and Pregnant Women and the applicable statutory provisions;

(3) agreeing to comply with applicable state and federal laws governing participation of providers in the Medicaid program; and

(4) employment of case managers with the following qualifications:

(A) Registered nurse (with a diploma, an associate's, bachelor's or advanced degree) or Social Worker (with bachelor's or advanced degree), currently licensed by the respective Texas licensure board and whose license is not temporary or provisional in nature; and

(B) possessing two years of cumulative paid full-time work experience or two years of supervised, full-time educational internship/practicum experience in the past ten years with children, up to age 21, and/or pregnant women. Experience must include assessing the psychosocial and health needs of and making community referrals for these populations.

(5) agreeing to comply with all licensure requirements of the case manager(s) respective state licensure/examining boards including the obligation to report all suspected child abuse/neglect; and

(6) knowledge of and coordination with providers of health and health-related services and other active community resources.

(b) A case manager employed in an approved Targeted Case Management for Pregnant Women and Infants or Texas Health Steps Medical Case Management agency at the time of implementation of these rules but who does not meet the licensure, educational and/or experience requirements outlined in subsection (a)(4)(A) and (B) of this section, is eligible to continue to provide case management services until the case manager leaves the employ of that agency unless state licensure law does not allow the case manager to provide the services.

(c) An applicant under investigation or being sanctioned by the department or any other State of Texas or Federal Governmental agency will not be approved as a case management provider.

§27.11. Case Management Provider Requirements.

In order to remain a Case Management Provider, an individual or agency must:

(1) comply with applicable state and federal laws and regulations governing participation of providers in the Medicaid program;

(2) maintain provider status with the department;

(3) develop and maintain a system for Case Management for Children and Pregnant Women services incorporating the following elements:

(A) Case Management for Children and Pregnant Women services in locations convenient for the eligible recipient to facilitate face-to-face contact;

(B) Provision of Case Management for Children and Pregnant Women services in order to assist eligible recipients in accessing necessary medical, social, educational, and other services;

(C) a comprehensive resource directory, updated at least annually, which contains the names, addresses, and telephone numbers of providers of health and health-related services including, but not limited to: physicians; other primary care providers; Early Childhood Intervention (ECI); Children with Special Health Care Needs (CSHCN); Special Supplemental Nutrition Program for Women, Infants and Children (WIC); rehabilitation services; the Medicaid Medical Transportation Program (MTP); the Texas Information and Referral Network, and locally active community services;

(D) an internal quality assurance plan that includes, but is not limited to, chart reviews and staff observation;

(E) a current list of opened and closed client records;

(F) an accounts receivable system through which billed claims will be tracked and matched with paid claims and client records to assure claims are billed and paid for correct dates of service, were billed with appropriate procedure codes and are not duplicative of other claims for the same client;

(G) outreach activities that assure individualized referrals. The following activities may impede client choice and therefore are prohibited:

(i) door to door, telephone or other cold-call marketing or solicitation of clients by providers;

(ii) the distribution of materials to Case Management for Children and Pregnant Women recipients that can reasonably be interpreted as intended to market the provider's services;

(iii) the distribution of any false or materially misleading materials to Case Management for Children and Pregnant Women recipients;

(iv) obtaining lists of Medicaid clients without a specific referral;

(v) offering incentives for enrollment into case management services; and/or

(vi) entering into exclusive referral relationships with referral sources.

(4) assure Case Management for Children and Pregnant Women services will be provided by approved case managers who meet the qualifications defined in §27.9 and §27.11 of this title (relating to Applicant Qualifications and Case Management Provider Requirements);

(5) assure that approved case managers:

(A) have received department-approved education and training regarding Case Management for Children and Pregnant Women;

(B) have the opportunity to participate in appropriate Medicaid, case management and THSteps workshops, seminars, and training;

(C) assume responsibility for all Case Management for Children and Pregnant Women services they provide to eligible recipients, including services by their designated support staff;

(D) participate in relevant motion or cost studies;

(E) agree to permit the department or its designee access to the Case Management for Children and Pregnant Women provider's records, and permit direct observation of case management activities for the purpose of determining the provider's suitability to continue participation as a Case Management for Children and Pregnant Women provider; and

(F) participate in local and/or regional case management systems/coalitions in accordance with program policies to assure cooperation and coordination with local health departments, the department's public health region(s), school districts and other Medicaid-approved case management providers as evidenced by:

(i) participation in community coalition meetings in accordance with program policy;

(ii) collaboration in planning case management delivery systems; and involvement in resolving case management problems.

(6) share information, within the limits of confidentiality, with the department and collaborating agencies to facilitate referral and monitoring of eligible recipients; and

(7) comply in a timely manner with all department data collection and reporting requirements.

§27.13. Application Process.

(a) Applications to become a Case Management for Children and Pregnant Women provider may be obtained by contacting the department or by accessing the department website.

(b) Applicants must include copies of documentation of all agency licenses, contracts and/or written agreements with their application.

(c) Applications must be typed and accompanied by all required supporting documentation set out in this subchapter. An original must be sent to the appropriate department regional office and one copy of the application must be submitted to the department central office.

(d) All applications shall be reviewed by the department staff. The review process shall be completed within 20 working days following receipt of an application.

(e) Incomplete applications shall not be approved and shall be returned to the applicant for completion.

(f) Applicants will be notified in writing of approval or nonapproval by the department. Applicants must still enroll as Medicaid providers through Medicaid provider enrollment.

(g) Applicants who have submitted complete applications and who are not approved by the department to provide case management services must wait, at a minimum, 6 months before resubmission of a new application.

§27.15. Case Management Provider Review and Monitoring Process.

(a) Approved providers will be monitored on an as-needed basis for compliance with rules and policies.

(b) Case managers or Case Management Providers who do not comply with program requirements may be terminated, placed on probationary status, referred to appropriate professional licensure entities for review, and/or referred for fraud and abuse investigation as described in department policies and procedures.

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

Filed with the Office of the Secretary of State on March 21, 2003.

TRD-200301861

Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 458-7236

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CHAPTER 32. CASE MANAGEMENT SUBCHAPTER C. CASE MANAGEMENT FOR HIGH-RISK PREGNANT WOMEN AND HIGH-RISK INFANTS

25 TAC §§32.301 - 32.305, 32.307

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

The Texas Department of Health (department) proposes the repeal of §§32.301 - 32.305 and §32.307, concerning case management for high-risk pregnant women and high-risk infants. Specifically, these sections cover definitions; eligible individuals; case management services; service limitations; provider qualifications and right to appeal.

Government Code, §2001.039, requires that each agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §§32.301 - 32.305 and §32.307 and determined that the proposed repeals are necessary because the subject of these rules will be incorporated into a new chapter proposed for adoption as described in this preamble.

The department published a Notice of Intention to Review §§32.301 - 32.305 and §32.307 in the *Texas Register* on November 19, 1999 (24 TexReg 10378). No comments have been received.

The proposed repeal of §§32.301 - 32.305 and §32.307 is necessary in order to combine services in new rules in Chapter 27, entitled Case Management for Children and Pregnant Women, of this title. Combining these sections in this new chapter will ensure integration of services to the eligible population for case management services, children with a health condition/health risk birth to 21 years and/or high-risk pregnant women of all ages. Specifically, the repealed sections cover definitions; eligible individuals; case management services; service limitations; provider qualifications, and the right to appeal. These rules are repeated in §§37.81 - 37.86 and were not repealed when §§32.301 - 32.305 and §32.307 were adopted.

The department also proposes the repeal of Early and Periodic Screening, Diagnosis, and Treatment, Subchapter J, Texas Health Steps Medical Case Management, §§33.501 - 33.506. Specifically, these repealed sections cover definitions, eligible recipients; THSteps Medical Case Management Services; service limitations; applicant and provider qualifications, and application, review and monitoring process.

The department at the same time is proposing the repeal of §§37.81 - 37.86 of this title concerning Medicaid case management for high risk pregnant women and high risk infants. Specifically, these sections cover introduction; definitions; case management services; provider qualifications; application and review

process, and documents adopted by reference and will be integrated in the new Chapter 27 of this title.

The department also proposes new Chapter 27, Case Management for Children and Pregnant Women, §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13 and 27.15. The new sections are proposed as an effort to combine case management programs to meet the needs of pregnant women of all ages and children with a health condition/health risk birth to 21 years. Specifically, these new sections cover definitions; eligible recipients; case management service provision; service limitations; applicant and provider qualifications; and application, review and monitoring processes.

The department provides health services to women and children in Texas under authority of the Health and Safety Code, Chapter 32; the State Appropriations Act and the Social Security Act, Title V. The Targeted Case Management Program for High Risk Pregnant Women and High Risk Infants was established under the authority of federal law, Social Security Act, Title XIX, §1915(g). This authorizes states to provide case management as a distinct service to target populations, through a waiver from Health Care Financing Administration (HCFA), now the Centers for Medicare and Medicaid Services or CMS. The Health and Human Services Commission (HHSC) provides authority to the department to propose rules to administer certain Medicaid program services in Texas. Human Resources Code, §22.0031, requires the establishment of a program for the case management of high-risk pregnant women of all ages and high-risk children to age one.

The Government Code, §531.021, provides HHSC with the authority to propose rules to administer the state's medical assistance program. The current rules were submitted by the department under its agreement with HHSC to operate the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program, and as authorized under §1.07, Acts of the 72nd Legislature, First Called Session (1991), Chapter 15, as amended by the Acts of the 73rd Legislature, Chapter 747, §2. The purpose of these sections is to make available medically necessary medical case management services mandated by EPSDT program. In Texas, the EPSDT program is known as Texas Health Steps (THSteps).

The proposed new rules for Case Management for Children and Pregnant Women will provide case management services to Medicaid eligible women of all ages who have a high risk pregnancy and to children with a health condition/health risk from birth to 21 years of age. The Medicaid Case Management for High Risk Pregnant Women and High Risk Infants Program, and the Texas Health Steps Medical Case Management Program, will become one program in the proposed new sections of Chapter 27 with the repeal of §§32.301 - 32.305, 32.307, 33.501 - 33.506, and 37.81 - 37.86. The new program will provide a greater continuity of services for all eligible recipients.

Ravi Rupsingh, M.P.A., Actuary, Actuary Analysis, HHSC, has determined for the first five years the repeals are in effect, there will be cost savings to the state through the combination of the two programs as described in this preamble. Total cost savings per year are $1,724,820, $6,153,493, $6,348,526, $6,549,411 and $6,745,893 in state fiscal years 2003, 2004, 2005, 2006 and 2007, respectively, for a total of $27,522,143 over these five state fiscal years. There will be no impact on local government.

Duane Thomas, Ph.D., Texas Department of Health, Director of Regional Case Management has also determined that for each of the first five years the repeals are in effect, anticipated public benefits include better access to primary care providers, preventative health services, other health services and community resources for children and pregnant women accessing the services. There will be costs to small businesses and micro-businesses. This was determined after concluding that the elimination of the Intake as a billable contact for Targeted Case Management for Pregnant Women and Infants providers will decrease the amount of reimbursement that these providers currently receive. The cost to small and micro-businesses for the first year of implementation is estimated to be $7,327 while the cost to large businesses for the first year of implementation is estimated to be $7,281. The estimated costs are based on the assumption that 70% of Targeted Case Management for Pregnant Women and Infants providers are large businesses and 30% of providers are small or micro-businesses. There will be no anticipated economic costs to persons who receive the services. The department has determined that the proposed repeals do not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking under Government Code, §2007.043.

Comments on the proposal may be submitted to Cossy Hough, LMSW-ACP, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 6664. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

A public hearing regarding this repeal will be held on April 8, 2003, from 1:00 p.m. to 4:00 p.m. at the Texas Department of Health, Board of Health Room, Room M739, 1100 West 49th Street, Austin, Texas 78756.

The repeals are proposed under the Health and Safety Code, §12.001, which provides the Board of Health (board) with the authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health; and under the Health and Safety Code, Chapter 32, which provides the board with the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; the Human Resources Code, §22.0031, which mandates case management for high risk pregnant women and high risk infants; the Human Resources Code, Chapter 32, which enables the state to provide medical assistance; the Government Code, §531.021, which provides HHSC with the authority to propose rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with HHSC to operate the EPSDT program, and as authorized under §1.07 of the Acts of the 72nd Legislature, First Called Session (1991), Chapter 15, as amended by the Acts of the 73rd Legislature, Chapter 747, §2.

The proposed repeals affect the Health and Safety Code, Chapter 32, the Human Resources Code, §22.0031 and Chapter 32.

§32.301. Definitions.
§32.302. Eligible Individuals.
§32.303. Case Management Services.
§32.304. Service Limitations.
§32.305. Provider Qualifications.
§32.307. Right To Appeal.

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

Filed with the Office of the Secretary of State on March 21, 2003.

TRD-200301862
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 458-7236

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CHAPTER 33. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT

The Texas Department of Health (department) proposes amendments to §§33.13-33.14, 33.61-33.63, 33.66, 33.112, 33.122-33.123, 33.125, 33.131-33.135 the repeal of §33.139, and new §33.15 and §33.140 concerning the administration of Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

Specifically, the proposed amendments cover program purpose; outreach, informing and support services; recipient rights; confidentiality of records; consent; freedom of choice; eligibility for services; periodicity; periodic check-up due date; exceptions to timely delivery of Texas Health Steps (THSteps) services; medical check-up services; medical diagnosis and treatment services; approved medical check-up providers; primary responsibilities of medical check-up providers; and claims. The proposed new sections concern definitions and management of complaints. The proposed repeal covers replacement of hearing aids.

The proposed amendments will clarify program specifications, specify the components of the program that are administered by the department and delete obsolete terms. These amendments will also replace the terms "early and periodic screening, diagnosis and treatment (EPSDT)" with "Texas Health Steps (THSteps)" and replace the term "screening" with the word "check-up" throughout the chapter. Texas Health Steps is the name of the EPSDT program in Texas.

In addition, the amendments to §33.122 reflect that a THSteps medical check-up is recommended annually for adolescents, rather than biennially, beginning at age eleven. THSteps continues to emphasize the importance of separate counseling and anticipatory guidance for the child and the accompanying parent/guardian during the adolescent years. Currently THSteps adolescent-aged recipients are eligible to receive a medical check-up annually. In accordance with federal EPSDT regulations, proposed amendments to §33.131 add, "lead toxicity screening" as a component of a THSteps medical check-up. Currently THSteps includes lead toxicity screening as a component of a THSteps medical check-up. Proposed amendments to §33.133 expand the type of providers who can provide THSteps medical check-ups and proposed amendments to §33.135 reflect the responsibilities of the Health and Human Services Commission (HHSC) in relation to the claims administration portion of the THSteps program.

New §33.15 adds a definition section applicable throughout subchapters A, B, C, D, and E; and new §33.140 addresses complaints concerning unlawful activities and quality of care issues.

Section §33.139 is being proposed for repeal because the department no longer maintains the authority to implement this section. Authority to implement this section was moved to the HHSC on September 1, 2001. Also, the rule should be repealed rather than transferred to HHSC because the language in this section is obsolete and does not reflect requirements of the EPSDT program under current law. Under current EPSDT law, there is no limit on the number of replacement hearing aids for EPSDT recipients as long as they are medically necessary. At this time, HHSC does not limit the number of replacement hearing aids.

In addition, the title of Subchapter A has been changed from Penalties to General Provisions in order to more accurately reflect the subchapter's content.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed the sections and has determined that reasons for adopting the sections continue to exist; however, the revisions are needed in order to reflect the changes to program administration and the laws that pertain to them.

The department published a Notice of Intention to Review for §§33.13-33.14, 33.61-33.63, 33.66, 33.112, 33.122-33.123, 33.125, 33.131-33.135, and 33.139, in the *Texas Register* on May 12, 2000 (25 TexReg 4358). No comments were received.

Linda M. Altenhoff, D.D.S., Director, Texas Health Steps and Medical Transportation Division, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

Dr. Altenhoff has also determined that for each year of the first five years the amended sections are in effect, the anticipated benefits include program clarification and more accurate reflection of the program's operations to Texas Health Steps recipients, families and providers. There will be no costs to micro-businesses or small businesses to comply with the sections as proposed. This was determined after concluding that there will be no new requirements or responsibilities imposed upon micro-businesses and small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Linda Altenhoff, D.D.S., Director, Texas Health Steps and Medical Transportation Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, (512) 458-7745. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

A public hearing on the proposed sections will be held on Thursday, April 10, 2003, at 4:00 p.m., in the Texas Department of Health Auditorium (K-100), 1100 West 49th Street, Austin, Texas.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§33.13 - 33.15

The amendments and new section are proposed under the Human Resources Code, §32.021(c), which allows the department to establish rules governing the Medicaid program; the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for its procedures and the performance of each duty imposed by law on the board, the department and the Commissioner of Health; and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's

medical assistance program and are submitted by the department under its agreement with the Health and Human Services Commission to operate the Early and Periodic Screening, Diagnosis, and Treatment program as authorized under Acts 1991, 72nd Legislature, First Called Session, Chapter 15, §1.07.

The proposed amendments and new section affect the Human Resources Code, Chapter 32.

§33.13. Purpose [~~Legal Base~~].

(a) The Texas Medicaid Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) program is a Title XIX federally-mandated program of prevention, diagnosis, and treatment for Medicaid recipients under age 21 years. In Texas, EPSDT is known as the Texas Health Steps (THSteps) program. The Texas Department of Health administers the medical and dental check-ups and treatment components of this program.

(b) [~~The Texas Department of Health must provide required early and periodic screening, diagnosis, and treatment (EPSDT) screening and treatment services to eligible families or recipients who request these services. The periodicity schedule determines when specified screening services are delivered. The department must provide any~~] THSteps check-up [~~EPSDT~~] services will be provided when requested by the recipient according to periodic eligibility for service. [~~and when medically necessary.~~] Other THSteps services will be provided when medical or dental necessity is established and federal financial participation is available.

(c) The rules in this subchapter implement the medical and dental check-up, dental treatment, and outreach and informing components of THSteps.

§33.14. Outreach, Informing, and Support Services.

(a) THSteps or its designee informs [~~The Texas Department of Health must inform each family of the availability of~~] THSteps [~~EPSDT~~] recipients and their families about THSteps services no later than 60 days after the Medicaid certification date and on a periodic basis thereafter using a combination of methods including written, oral, and in-person contact. This notification must be done in writing and /or in-person using [~~face-to-face contact in~~] clear, non-technical [~~nontechnical~~] language. THSteps uses [~~The department must use~~] procedures suitable for informing persons who are illiterate, blind, deaf, or who cannot understand the English language.

(b) THSteps recipients [~~All new eligibles~~] and families who become eligible after a period of Medicaid ineligibility are also informed about THSteps services upon recertification and on a periodic basis thereafter. [~~must be properly informed. However, a family need not be informed more than twice in a 12-month period. Families with no member receiving any EPSDT services must be informed in writing of EPSDT at least once each year.~~]

§33.15. Definitions.

The following words or terms, when used in Subchapters A, B, C, D, and E, shall have the following meanings unless the context clearly indicates otherwise:

(1) Accompanied--A parent, guardian or authorized adult who presents a recipient under age 15 at a THSteps medical or dental check-up, or treatment visit and continues to wait for the child while the check-up or treatment takes place. It is a requirement of §33.134(e) of this title (relating to Primary Responsibilities of Medical Check-up Providers) of Subchapter E that a recipient under the age of 15 be accompanied as a condition for reimbursement, unless services are provided by an exempt entity.

(2) Authorized adult--A person, including an adult related to the child, who is authorized by a child's parent or guardian to accompany that child to a THSteps medical or dental check-up or treatment visit.

(3) Board--The Texas Board of Health.

(4) EOB--Explanation of Benefits.

(5) EPSDT--Early and Periodic Screening, Diagnosis, and Treatment is a service of the Medicaid program. EPSDT provides medical and dental check-ups, diagnosis, and treatment to Medicaid eligible recipients younger than 21 years of age. EPSDT is known in Texas as Texas Health Steps, (THSteps).

(6) Exempt entity--A child-care facility (as defined in the Human Resources Code §42.002(3)), school health clinic, and Head Start programs that are exempt from the parental accompaniment requirement under §33.134(e) of this title of Subchapter E.

(7) FFP--Federal financial participation is the federal government's share of a state's expenditures under the Medicaid program.

(8) HHSC--The Health and Human Services Commission.

(9) Medicaid--The medical assistance program implemented by the State of Texas under the provisions of Title XIX of the Social Security Act, as amended, (42.U.S.C. §§1396-1396v).

(10) Parental Involvement--The encouragement and involvement in and management of the health care of children receiving services from an exempt entity as defined in paragraph (6) of this section. Parental involvement includes the exempt entity notifying the child's parent, guardian, or other authorized adult before each visit for a THSteps medical or dental check-up or treatment visit of the time and place of the child's appointment and encouraging the parent, guardian, or other authorized adult to attend. Notification shall be done by the means of communication determined by the exempt entity to be the most effective. Such communication must be documented and may include, but is not limited to, one or more of the following options: a home visit from an outreach worker, written or printed correspondence, or telephone contact.

(11) Recipient--An individual who has been determined eligible for Medicaid.

(12) R&S--A Remittance and Status report that provides information on pending, paid, denied, and adjusted claims.

(13) TDH--Texas Department of Health.

(14) THSteps--Texas Health Steps (THSteps) is the Texas name for the federally-mandated Medicaid service known as EPSDT.

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

Filed with the Office of the Secretary of State on March 21, 2003.

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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SUBCHAPTER B. RECIPIENT RIGHTS

25 TAC §§33.61 - 33.63, 33.66

The amendments are proposed under the Human Resources Code, §32.021(c), which allows the department to establish rules governing the Medicaid program; the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for its procedures and the performance of each duty imposed by law on the board, the department and the Commissioner of Health; and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's medical assistance program and are submitted by the department under its agreement with the Health and Human Services Commission to operate the Early and Periodic Screening, Diagnosis, and Treatment program as authorized under Acts 1991, 72nd Legislature, First Called Session, Chapter 15, §1.07.

The proposed amendments affect the Human Resources Code, Chapter 32.

§33.61. Recipient Rights.

(a) Acceptance of THSteps [~~all early and periodic screening, diagnosis, and treatment (EPSDT)~~] services is [~~must be~~] voluntary. Acceptance or refusal of THSteps [~~EPSDT~~] services does not affect eligibility for or benefits of any other Medicaid [~~department~~] service.

(b) A recipient who refuses THSteps [~~EPSDT~~] services may, still subsequently [~~at a later time,~~] request and be provided such services if still eligible for Medicaid and THSteps.

(c) All THSteps [~~EPSDT~~] records about recipients are considered confidential information.

§33.62. Confidentiality of Records.

(a) Public laws [~~law~~] and Medicaid regulations prohibit the disclosure of information about Medicaid recipients without the recipient's consent, except for purposes directly connected with [~~to~~] the administration of the program (see 42 U.S.C. §1396a(a)(7); 42 C.F.R. §§431.301-431.306; Human Resources Code §§12.003 and 21.012; Government Code §552.101). Eligibility and other information for which the recipient gives consent may [~~information will~~] be provided to THSteps [~~screening, diagnosis and treatment~~] providers [~~and other information for which the recipient gives consent~~]. Medicaid providers of THSteps services [~~screening, diagnosis, and treatment~~] are not considered directly connected with the administration of the program. Consequently, THSteps [~~screening, diagnosis and treatment~~] providers are not entitled to confidential information, including lists of names and addresses of recipients, without the consent of the recipient.

(b) Contracted agencies performing certain administrative functions are considered an extension of TDH [~~the department~~] in exercising its responsibility [~~responsibilities~~] to ensure effective THSteps program operations. Such agencies, including [~~TDH and~~] contractors for outreach, informing [~~follow-up~~], and transportation services, may receive confidential information without an individual recipient's consent to the extent that it is necessary in the administration of the contract. Pursuant to 42 U.S.C .§1396a(a)(7), 42 C.F.R. §§431.301-431.306 and Human Resources Code §12.003 [~~However~~], these agencies are bound by the same standards of confidentiality as TDH [~~the department~~]. They must provide effective safeguards to ensure confidentiality.

§33.63. Consent.

Consent by a person who may legally give consent is necessary for participation in THSteps [~~EPSDT~~]. Consent requires the free exercise of choice without any force, fraud, deceit, constraint, or coercion by an individual or his legally authorized representative. The basic elements necessary to consent include:

(1) - (4) (No change.)

(5) a statement that the person is free to deny [~~not consent~~] or withdraw consent and discontinue participation at any time without any loss of other Medicaid [~~department~~] benefits and services.

§33.66. Freedom of Choice.

(a) All THSteps [~~EPSDT~~] recipients have the right to choose participating providers of THSteps medical and [~~screening,~~] dental check-up [~~,and~~] diagnosis, and treatment services.

(b) (No change.)

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

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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SUBCHAPTER C. ELIGIBILITY

25 TAC §33.112

The amendment is proposed under the Human Resources Code, §32.021(c), which allows the department to establish rules governing the Medicaid program; the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for its procedures and the performance of each duty imposed by law on the board, the department and the Commissioner of Health; and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's medical assistance program and are submitted by the department under its agreement with the Health and Human Services Commission to operate the Early and Periodic Screening, Diagnosis, and Treatment program as authorized under Acts 1991, 72nd Legislature, First Called Session, Chapter 15, §1.07.

The proposed amendment affects the Human Resources Code, Chapter 32.

§33.112. Eligibility for Services.

[~~All~~] Medicaid recipients under age 21 are eligible for THSteps medical and dental check-ups, diagnosis, and treatment [~~EPSDT~~] services[~~. Services can be continued~~] through the month of the recipient's 21st birthday [~~eligible recipient becomes 21~~].

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

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Susan K. Steeg
General Counsel
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SUBCHAPTER D. PERIODICITY

25 TAC §§33.122, 33.123, 33.125

The amendments are proposed under the Human Resources Code, §32.021(c), which allows the department to establish rules governing the Medicaid program; the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for its procedures and the performance of each duty imposed by law on the board, the department and the Commissioner of Health; and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's medical assistance program and are submitted by the department under its agreement with the Health and Human Services Commission to operate the Early and Periodic Screening, Diagnosis, and Treatment program as authorized under Acts 1991, 72nd Legislature, First Called Session, Chapter 15, §1.07.

The proposed amendments affect the Human Resources Code, Chapter 32.

§33.122. Periodicity.

~~[(a) The Texas Department of Health provides early and periodic screening, diagnosis, and treatment (EPSDT) services requested by recipients according to the recipient's periodic eligibility for service.]~~

(a) [~~(b)~~] THSteps comprehensive [~~Comprehensive~~] medical check-up [~~screening~~] services are available [~~once~~] at each of the following time periods:

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

(16) 10 years [~~through 11 years~~];

(17) 11 years;

(18) [~~(17)~~] 12 years [~~through 13 years~~];

(19) 13 years;

(20) [~~(18)~~] 14 years [~~through 15 years~~];

(21) 15 years;

(22) [~~(19)~~] 16 years [~~through 17 years~~];

(23) 17 years;

(24) [~~(20)~~] 18 years [~~through 19 years~~];

(25) 19 years;

(26) [~~(21)~~] 20 years.

~~[(c) Adolescent preventive service visits are available once at each of the following time periods:]~~

~~[(1) 11 years;]~~

~~[(2) 13 years;]~~

~~[(3) 15 years;]~~

~~[(4) 17 years; and]~~

~~[(5) 19 years.]~~

(b) [~~(d)~~] Periodic routine dental check-up services are available for [~~to~~] eligible recipients one year of age and older once every six months, based on the [~~last~~] date of the recipient's last dental check-up [~~services~~].

§33.123. Periodic Check-up [~~Screening~~] Due Date.

The due date for medical check-ups [~~periodic screening~~] is [~~defined as~~] the starting date of a new period of eligibility for medical check-ups [~~screening or for dental services~~].

§33.125. Exceptions to Timely Delivery of THSteps Services.

Exceptions to standards for the timely delivery of THSteps services can be made if:

(1) the recipient or family loses eligibility. This means that the recipient or family does not have a valid Medicaid [~~medical care~~] identification form [~~card~~] or Medicaid verification letter for the date that a medical check-up [~~screening~~] or the first appointment [~~encounter~~] for diagnosis and treatment is scheduled;

(2) the recipient or family could not be located despite a good faith effort to do so. This means that no personal contact could [~~can~~] be made with an adult member of the recipient's family;

(3) the recipient's failure to receive necessary services in a timely manner was due to an action or decision of the family or recipient rather than a failure of THSteps or its designee [~~the department~~] to offer and provide support services.

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

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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SUBCHAPTER E. MEDICAL PHASE

25 TAC §§33.131 - 33.135, 33.140

The amendments and new section are proposed under the Human Resources Code, §32.021(c), which allows the department to establish rules governing the Medicaid program; the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for its procedures and the performance of each duty imposed by law on the board, the department and the Commissioner of Health; and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's medical assistance program and are submitted by the department under its agreement with the Health and Human Services Commission to operate the Early and Periodic Screening, Diagnosis, and Treatment program as authorized under Acts 1991, 72nd Legislature, First Called Session, Chapter 15, §1.07.

The proposed amendments and new sections affect the Human Resources Code, Chapter 32.

§33.131. Medical Check-up [~~Screening~~] Services.

(a) Medical check-up [~~screening~~] services are provided under the THSteps [~~Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)~~] Program to ensure that Medicaid recipients under 21 years of age have continuous access to preventive health care. The objectives of a medical check-up [~~screening~~] are the early detection of [~~suspected~~] health problems and the referral for definitive diagnosis and treatment when [~~if~~] indicated by the medical check-up [~~screening~~].

(b) [~~(1)~~] The following are components of a THSteps comprehensive medical check-up [~~screening services are~~]:

(1) [~~(A)~~] comprehensive health and developmental history (including physical and mental);

(2) [~~(B)~~] comprehensive unclothed physical examination;

(3) [~~(C)~~] developmental assessment;

(4) [~~(D)~~] immunizations appropriate for age and health history;

(5) [~~(E)~~] assessment of nutritional status;

(6) [~~(F)~~] vision testing;

(7) [~~(G)~~] hearing testing;

(8) [~~(H)~~] laboratory tests appropriate to age and risk, including lead toxicity screening;

(9) [~~(I)~~] health education (includes anticipatory guidance); and

(10) [~~(J)~~] referral to a dentist for periodic, routine diagnosis, [~~diagnostic~~] and treatment services for recipients one year of age and older.

[~~(2) The components of adolescent preventive service visits are health guidance to promote the health and well-being of adolescents/parents and screening for biomedical, behavioral, and emotional conditions relatively common to adolescents.~~]

§33.132. Medical Diagnosis and Treatment Services.

[~~(a)~~] Payment will be considered [~~The Texas Department of Health (department) or its designee will consider payment on an exception basis~~] for any service considered medically necessary and for which federal financial participation is available, [~~the department is allowed to provide with Medicaid/Title XIX federal matching funds when required to diagnose or treat a condition identified during an EPSDT medical screening performed on or after April 1, 1990, whether or not the service is currently included in the Title XIX state plan. Services exceeding the Title XIX state plan coverage are~~] subject to the following limitations:

(1) Service coverage is determined on an individual basis, requires prior approval for payment by HHSC [~~the department~~] or its designee, and is subject to periodic reassessment.

[~~(2) Services must be medically necessary.~~]

(2) [~~(3)~~] Clients must be under age 21 and eligible for Medicaid on the date of service.

(3) [~~(4)~~] Payment for services will be made only to approved providers enrolled in the Texas Medicaid Program.

[~~(b) Reimbursement for EPSDT medical diagnosis and treatment services will be based on existing Medicare and Medicaid fee schedules/profiles.~~]

§33.133. Approved Medical Check-up [~~Screening~~] Providers.

(a) Medical check-up [~~screening~~] providers include currently licensed:

(1) [~~licensed~~] physicians (MD or DO); [~~and~~]

(2) public or private health care providers or facilities that can perform the required medical check-up [~~screening~~] procedures under a physician's direction;and [~~.~~]

(3) advanced practice nurses whose educational curriculum includedcourses of study in advanced pediatric physical assessment of infants, children and adolescents.

(b) Providers as defined in subsection (a) of this section must be enrolled as Medicaid and THSteps providers in order to submit claims to receive reimbursement for medical check-ups.

[~~(b) To be eligible for reimbursement, screening providers must be enrolled as screening providers by the department or its designee.~~]

§33.134. Primary Responsibilities of Medical Check-up [~~Screening~~] Providers.

[~~(a)~~] The primary responsibilities of medical check-up [~~screening~~] providers are:

(1) to conduct medical check-ups [~~screening~~] according to policies and procedures established by TDH [~~the Texas Department of Health~~];

(2) to provide clinic surroundings which will establish a good relationship between clinic personnel, the recipient, and the recipient's family;

(3) to interpret medical check-up [~~screening~~] results to the recipient or the recipient's parent, conservator, or responsible adult, [~~and/or recipient~~] during the course of the medical check-up [~~exit interview~~];

(4) to make referrals for needed follow-up diagnosis and treatment services; and

(5) to ensure a recipient under age 15 is accompanied by a parent, guardian or authorized adult [~~presents a recipient under age 15~~] at a THSteps [~~an EPSDT~~] medical check-up [~~checkup and continues to wait for the child while the checkup takes place~~] unless the services are provided by an exempt entity and if the exempt entity [~~a school health clinic, Head Start program, or child-care facility (as defined in the Human Resources Code, §42.002(3)) if the clinic, program or facility~~] :

(A) obtains written consent to the services, which has not been revoked, from the child's parent or guardian within the one-year period prior to the date the services are provided; and

(B) encourages parental involvement in and management of the health care of the children receiving services from the clinic, program, or facility.

[~~(b) The term "authorized adult" means a person, including an adult related to the child, who is authorized by a child's parent or guardian to accompany a child to a Texas Health Steps medical checkup.~~]

[~~(c) The term "parental involvement" applies only to school health clinics, Head Start programs, and child-care facilities which are exempt from the parental accompaniment requirement under subsection (a)(5) of this section. The term means exempt entities shall encourage parental involvement in and management of the health care of children receiving services from the clinic, program, or facility by notifying the child's parent, guardian, or other authorized adult before each visit for an EPSDT medical checkup of the time and place of the child's appointment and encouraging the parent, guardian, or other authorized adult to attend. The parent, guardian, or other authorized adult shall be notified in a timely manner by the means of communication determined by the clinic, program, or facility to be most effective. Such communication must be documented and may include, but is not limited to, one or more of the following options: a home visit from an outreach worker, written or printed correspondence, or telephone contact.~~]

§33.135. Claims - Time Limits, Return, and Denial.

(a) The THSteps [~~Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)~~] Program has time limits for submitting

claims. Payment is denied if these [~~the~~] time limits [~~frames~~] are not met. Time limits are as follows:

(1) THSteps [~~EPSDT~~] medical check-up provider [~~screening~~] claims must be received by HHSC or its designee [~~the health insuring agent~~] within 95 days from each date of service on the claim.

[~~(2) Claims for diagnostic and treatment services must be received by the health insuring agent within 95 days from each date of service on the claims.~~]

(2) [~~(3)~~] If a service is billed to another insurance resource, the claim must be received by HHSC or its designee within 95 days of the claim disposition by the other resource.

(3) [~~(4)~~] If a service is billed to a third-party resource that has not responded, the claim must be received by HHSC or its designee [~~the health insuring agent~~] within 365 days [~~12 months~~] of the service date; however, the claim must not be submitted to HHSC or its designee [~~the health insuring agent~~] before 110 days after the third party has been billed.

(b) All appeals of denied claims and requests for claims adjustments must be received by HHSC or its designee [~~the health insuring agent~~] within 180 days from the date of the last denial of and/or adjustment to the original claim.

(c) Claims received by HHSC or its designee [~~the health insuring agent~~] which are lacking the information necessary for processing are listed on the R&S report with an EOB code requesting the missing information [~~denied as incomplete claims~~]. The resubmission of the claim containing the necessary information must be received by HHSC or its designee [~~the health insuring agent~~] within 180 days from the date on the R&S to be considered for payment [~~last denial date~~].

§33.140. Management of Complaints.

TDH will report all allegations of Medicaid fraud and other unlawful activities to the appropriate authority for review of the allegations and determination of the appropriate action as defined in TDH policy. TDH will refer all complaints alleging quality of care issues to the appropriate licensing or regulatory authority.

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

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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25 TAC §33.139

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

The repeal is proposed under the Human Resources Code, §32.021(c), which allows the department to establish rules governing the Medicaid program; the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for its procedures and the performance of each duty imposed by law on the board, the department and the Commissioner of Health; and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's medical assistance program and are submitted by the department under its agreement with the Health and Human Services Commission to operate the Early and Periodic Screening, Diagnosis, and Treatment program as authorized under Acts 1991, 72nd Legislature, First Called Session, Chapter 15, §1.07.

The proposed repeal affects the Human Resources Code, Chapter 32.

§33.139. Replacement of Hearing Aids.

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

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Susan K. Steeg
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CHAPTER 33. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT

The Texas Department of Health (department) proposes amendments to §§33.301-33.304, 33.334, 33.351-33.358, new §§33.305-33.311, 33.314-33.315, 33.317-33.320, 33.331, and the repeal of §§33.305-33.309, 33.312-33.318, and 33.331-33.333 concerning the Texas Health Steps dental services.

Specifically, the proposed amendments to §§33.301-33.304 cover definitions; oral evaluations and dental services; preventive dental services, and therapeutic dental services. Proposed new §§33.305-33.311 covers orthodontic services limitations, eligibility for orthodontic services, payment limitations for orthodontic services, emergency dental services; allowable services and limitations; eligibility for Texas Health Steps dental services, and requirements for provider enrollment and continuing participation. Proposed new §§33.314-33.315 cover charges to recipients and payment of claims. Proposed new §§33.317-33.320 cover change to another provider; and standards of care. Proposed new §33.331 covers the purpose of the dental utilization review process; the proposed amendment to §33.334 covers post-payment orthodontic review; the proposed amendments to §§33.351-33.352 cover types of department utilization reviews and selection of dentists for department utilization review. The proposed amendment to §§33.353 adds a requirement that the notice to providers of a utilization review be in writing. The proposed amendments to §§33.354-33.358 cover provider cooperation, disposition of department utilization review results, recoupment of overpayments as a result of department utilization review, administrative actions and/or sanctions and referral for investigation of fraud or program abuse.

Specifically, the proposed repeals of §§33.331-33.333 cover orthodontic service limitations, eligibility for orthodontic services and payment limitations for orthodontic services.

The department also proposes new §§33.319-33.320 that covers management of complaints and performance of dental services.

The proposed amendments to §33.301 add new definitions; the proposed amendments to §33.302 exclude non-applicable language to the section while clarifying service limitations; the proposed amendments to §§33.303-33.304 ensure consistency in service standards; new §33.305 is renamed Orthodontic Services Limitations and incorporates language from proposed repealed §33.333 while excluding language concerning emergency dental services. Proposed new §33.306 is retitled Eligibility for Orthodontic Services, excludes language concerning allowable services and limitations and includes language from the proposed repeal of §33.332. Proposed new §33.307 is renamed Payment Limitations for Orthodontic Services, excludes language concerning eligibility and adds language regarding payment limitations for orthodontic services. Proposed new §33.308, renamed Emergency Dental Services, excludes language regarding provider enrollment and continuing participation requirements while adding language concerning emergency dental services. Proposed repeal of §33.309 excludes language concerning termination of a provider agreement, as the department no longer maintains the authority to enforce those provisions. Proposed new §33.309 adds language relating to allowable services and limitations.

Proposed new §33.310, renamed as Eligibility for THSteps Dental Services, excludes language pertaining to maximum payment and adds language concerning eligibility for THSteps dental services. Proposed new §33.311 is renamed as Requirements for Provider Enrollment and Continuing Participation, and appropriate language pertinent to the new title is added. The proposed repeal of §33.312 excludes language that covered charges to recipients.

Language relating to payment of claims is excluded from the repeal of §33.313. Proposed new §33.314 adds a new title, Charges to Recipients, as well as language appropriate to the new title. The previous title, Claims - Time Limits, Submission and Denial is deleted in the repeal of §33.316; the repeal also excludes language pertaining to this title as the department is not authorized to set time limits on claim submission and denial.

Proposed new §33.315 renames this section as Payment of Claims and adds appropriate language to this section. The prior title of this section, Changes to Another Provider, is deleted and moved to proposed new §33.317. Pertinent language relating to change to another provider is also moved to proposed new §33.317.

Language relating to Standards of Care is excluded in the repeal of §33.316 and moved to proposed new §33.318.

Proposed new §33.317 is renamed as Change to Another Provider and adds language pertinent to the new title. The former title of this section, Management of Complaints and accompanying language is moved to proposed new §33.319.

Proposed new §33.318 is renamed as Standards of Care and incorporates language pertinent to the new title. The prior name of this section, Performance of Dental Services and relevant language, is moved to proposed new §33.320.

Proposed new §33.331 is renamed as Purpose and explains the purpose of the dental utilization review process. The prior name of this section, Orthodontic Services Limitation, and accompanying language is moved to proposed amended §33.305.

Proposed amended §33.334 restructures pertinent portions for clarity. Proposed amended §33.351 clarifies the responsibility of the department and HHSC related to utilization reviews. Proposed amended §33.352 adds stricter standards and designates the proper entity to which complaints should be made.

Proposed amended §33.353 requires that providers be notified in writing of a utilization review.

Proposed amended §33.354 restructures the section for clarity; proposed amended §33.355 adds a new standard concerning review results and also reflects changes in the entity that may forward utilization results to the Office of Investigations and Enforcement at the Health and Human Services Commission.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §§33.301-33.309, 33.312-33.318 and §§33.331-33.334, and §33.351-33.358 and has determined that reasons for adopting these sections continue to exist. However, the rules need revision as described in this preamble.

The department published a Notice of Intention to Review §§33.301-33.318 in the May 12, 2000 issue of the *Texas Register* (25 TexReg 4358). No comments were received. The department published a Notice of Intention to Review §§33.331-33.334, and 33.351-33.358 in the November 22, 2002 issue of the *Texas Register* (27 TexReg 10957). No comments were received.

Lee Johnson, Financial Management Division Director, has determined that for each year of the first five-year period the revised sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Jerry W. Felkner, State Dental Director, Division of Oral Health, has determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of enforcing the sections will be a more effective and efficient provision of Texas Health Steps dental services to eligible recipients. Additionally, the proposed sections will provide more specific guidance to providers and recipients. The rules will have no adverse economic effect on micro-businesses and/or small businesses because the sections do not add any new or additional requirements on either eligible providers or recipients. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Mike McAnally, Program Policy Analyst, Division of Oral Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7323. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The department's Board of Health (board) voted on the proposed repeal of §§33.310 - 33.311 concerning reimbursement rates. Subsequent to the board's approval on February 28, 2003, and prior to this publication, the Health and Human Services Commission transferred 25 TAC §§33.310 - 33.311 to 1 TAC §§355.8443 and 355.8445. The transfer was filed by the Health and Human Services Commission with the Office of the Secretary of State on March 4, 2003, and was published in the March

21, 2003, issue of the *Texas Register* (28 TexReg 2523). Therefore, the repeal of §§33.310 - 33.311 is not included in this proposal.

SUBCHAPTER G. DENTAL SERVICES

25 TAC §§33.301 - 33.311, 33.314, 33.315, 33.317 - 33.320

The amendments and new sections are proposed under the Health and Safety Code, §32.021, which allows the Texas Department of Health to establish rules governing the Medicaid program; the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with authority to adopt rules for its procedures and the performance of each duty imposed by law on the board, the department and the commissioner of health; and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's medical assistance program and are submitted by the department under its agreement with the Health and Human Services Commission to operate the Early and Periodic Screening, Diagnosis, and Treatment program, also known as THSteps, as authorized under Acts 1991, 72nd Legislature, First Called Session, Chapters 15, §1.07.

The proposed amendments and new sections affect the Human Resources Code, Chapter 32.

§33.301. Definitions.

The following words and terms, when used in Subchapters G and H of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accompanied--A parent, guardian or authorized adult who presents a recipient under age 15 at a Texas Health Steps (THSteps) [~~an EPSDT~~] medical or dental check-up, [~~checkup~~] or treatment visit and continues to wait for the child while the check-up [~~checkup~~] or treatment takes place. It is a requirement of §33.318 of this title (relating to Standards of Care) that a recipient under the age of 15 be accompanied as a condition of reimbursement, unless services are provided by an exempt entity.

(2) Authorized adult--A person, including an adult related to the child, who is authorized by a child's parent or guardian to accompany a child to a THSteps [~~Texas Health Steps~~] medical or dental check-up or treatment visit [~~checkup~~].

(3) Adjusted Fee--The fee which results from action taken by the HHSC or its designee in some instances in order to reduce the fee billed by the provider to below the maximum amount which can be billed.

(4) [~~(3)~~] Dental necessity--For [~~for~~] dental services or products provided, whether a prudent dentist would provide the service or product to a patient to diagnose, prevent, or treat orofacial pain, infection, disease, dysfunction, or disfiguration in accordance with generally accepted practices:

(A) of the professional dental community;

(B) within the American Dental Association's Dental Practice Parameters, published by the American Dental Association, Revised 1997; and/or

(C) within the Quality Assurance Criteria of the American Academy of Pediatric Dentistry, as applicable, published in Pediatric Dentistry, Journal of the American Academy of Pediatric Dentistry, Reference Manual, 2000-2001, Volume 22, Number 7.

[~~(4) Department--The Texas Department of Health.~~]

(5) Division--The Division of Oral Health of the Texas Department of Health.

(6) EOB--Explanation of Benefits.

(7) [~~(5)~~] EPSDT--Early and Periodic Screening, Diagnosis, and Treatment [~~(EPSDT)--~~] is a service of the Medicaid program. EPSDT provides medical and dental check-ups, diagnosis and treatment to Medicaid eligible recipients younger than 21 years of age. EPSDT is known in Texas as Texas Health Steps. [~~A component of the Medicaid program, also known as Texas Health Steps (THSteps), which provides medical check-up and dental services to Medicaid and Texas Health Steps clients under age 21 years.~~]

(8) Exempt entity--A child-care facility (as defined in Human Resources Code §42.002(3)), school health clinic, and Head Start programs which are exempt from the parental accompaniment requirement under §33.318 of this title (relating to Standards of Care).

(9) FFP--Federal financial participation is the federal government's share of a State's expenditures under the Medicaid program.

(10) [~~(6)~~] HHSC--The Health and Human Services Commission.

(11) [~~(7)~~] Manual--The Texas Medicaid Provider Procedures Manual, including all updates published in the Texas Medicaid Bulletin.

(12) [~~(8)~~] Medicaid--The medical assistance program implemented by the State of Texas under the provisions of Title XIX of the Social Security Act, as amended (42 U.S.C. §§1396-1396v). [~~A medical and dental program provided under Title XIX of the federal Social Security Act and the Human Resources Code, Chapter 32~~].

(13) OHSAC--The Oral Health Services Advisory Committee is the official body which assists the TDH Division of Oral Health by providing review, advice, and recommendations regarding a variety of subjects related to the operations and policy of the Division.

(14) [~~(9)~~] OIE--The Office of Investigations and Enforcement at the Health and Human Services Commission.

(15) [~~(10)~~] Parental involvement--The encouragement and involvement in and management of the health care of children receiving services from an exempt entity as defined in paragraph (8) of this section. Parental involvement includes the exempt entity [~~this term applies only to school health clinics, Head Start programs, and child-care facilities which are exempt from the parental accompaniment requirement under §33.316(c) of this title (relating to Standards of Care). The term means exempt entities shall encourage parental involvement in and management of the health care of children receiving services from the clinic, program, or facility by~~] notifying the child's parent, guardian, or other authorized adult before each visit for a THSteps [~~an EPSDT~~] medical or dental check-up [~~checkup~~] of the time and place of the child's appointment and encouraging the parent, guardian, or other authorized adult to attend. Notification shall be done by [~~The parent, guardian, or other authorized adult shall be notified in a timely manner by~~] the means of communication determined by the exempt entity [~~clinic, program, or facility~~] to be the most effective. Such communication must be documented and may include, but is not limited to, one or more of the following options: a home visit from an outreach worker, written or printed correspondence or telephone contact.

(16) [~~(11)~~] Recipient--An individual who has been determined eligible for Medicaid [~~A Medicaid-enrolled client~~].

(17) R & S--A Remittance and Status report which provides information on pending, paid, denied, and adjusted claims.

(18) [~~(12)~~] SBDE--The State Board of Dental Examiners.

(19) TDH--Texas Department of Health.

(20) THSteps--Texas Health Steps is the Texas name for the federally-mandated Medicaid service known as EPSDT.

§33.302. Oral Evaluations and Dental Services.

[~~(a) The name of the Early and Periodic Screening, Diagnosis, and Treatment program has been changed to Texas Health Steps.~~]

(a) [~~(b)~~] In addition to initial and periodic diagnostic oral evaluations, which may include radiographs and other diagnostic tests, three categories of dental services are available--preventive, therapeutic, and emergency--as defined in the following sections. These services are described in the Medicaid dental fee schedule published annually by the TDH [~~department~~] in the manual. [~~These services are subject to the limitations listed in the dental fee schedule and in the description of Texas Health Steps dental services in the manual.~~] Prior authorization may be required for certain services. Services delivered must [~~should~~] conform to professionally recognized standards of care as recognized by the SBDE, and are subject to utilization review.

(b) Periodicity - Routine dental check-up services are available for eligible recipients one year of age and older once every six months, based on the date of the recipient's last dental check-up.

§33.303. Preventive Dental Services.

Preventive dental services include only the following:

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

§33.304. Therapeutic Dental Services.

Therapeutic services include only the following:

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

(9) orthodontics, as defined in §§33.305-33.307 [~~§§33.331-33.334~~] of this title (relating to Orthodontic Services).

§33.305. Orthodontic Services Limitations.

(a) Orthodontic services are limited to treatment of severe handicapping malocclusion and other related conditions as described and measured by the procedures and standards published in the manual.

(b) Orthodontics for cosmetic reasons only is not an allowable service.

§33.306. Eligibility for Orthodontic Services.

(a) Recipients must be younger than 21 years of age and eligible for Medicaid and THSteps on the date that the prior authorization request for orthodontic services is approved in order to be eligible for orthodontic services.

(b) If a recipient reaches 21 years of age or becomes ineligible for Medicaid before orthodontic treatment is completed, payment may be provided to complete the single course of orthodontic treatment that was prior-authorized and initiated while the recipient was younger than 21 years of age and Medicaid-eligible.

§33.307. Payment Limitations for Orthodontic Services.

(a) Except for the initial orthodontic visit, all orthodontic services must be prior-authorized by HHSC or its designee according to the procedures described in the manual.

(b) A prior authorization is issued for a complete plan of orthodontic treatment and includes all procedures for completion of the single course of treatment to be accomplished over a specified period of time.

(c) A prior authorization for orthodontic services is not transferable to another provider.

(d) If a request for prior authorization of a plan of orthodontic services for a recipient is not approved, the provider may file a claim and receive payment to defray the costs of the diagnostic materials required for submitting the request. TDH policy in effect at the time of service delivery shall determine the number of denials for which reimbursement of costs shall be available.

§33.308. Emergency Dental Services.

(a) Emergency dental services are limited to the following:

(1) procedures necessary to control bleeding, relieve pain, and eliminate acute infection;

(2) operative procedures required to prevent imminent loss of teeth; and

(3) treatment of injuries to the teeth and supporting structures.

(b) Routine restorative procedures and root canal therapy are not emergency services.

(c) Prior authorization is not required for emergency dental services.

§33.309. Allowable Services and Limitations.

(a) For the most effective use of available funds and to offer services to as many recipients as possible, the TDH may impose certain limitations, such as those regarding allowable services and age, and others as described in the Medicaid dental fee schedule published in the manual.

(b) Payment shall be made only for services for which dental necessity has been established and for which FFP is available and that are delivered in accordance with the Medicaid program requirements in effect on the date of service.

(c) A prior authorization is not transferable to another provider.

§33.310. Eligibility for THSteps Dental Services.

(a) Persons are eligible for dental services if they have a current Texas Medicaid identification or Medicaid verification letter that indicates Medicaid and THSteps eligibility for the time period during which services are delivered, and they are under age 21. Providers may also verify eligibility for clients who do not have a Medicaid identification or Medicaid verification letter by contacting HHSC or its designee.

(b) Medicaid recipients under age 21 are eligible for THSteps medical and dental check-ups, diagnosis and treatment services through the month of the recipient's 21st birthday, except for recipients who already have an approved treatment plan for orthodontic services. If a recipient reaches age 21 or loses Medicaid eligibility before the authorized orthodontic treatment is completed, reimbursement is provided to complete the orthodontic treatment that was authorized and initiated while the recipient was younger than age 21, eligible for Medicaid and THSteps, and if such treatment is completed within 36 months.

(c) Recipients one year of age and older who are eligible for THSteps services may receive periodic, preventive dental services as defined in §33.303 of this title (relating to Preventive Dental Services) every six months.

(d) Recipients may receive THSteps dental check-ups beginning at 12 months of age and every six months thereafter through age 21. Recipients younger than 12 months of age are not eligible for routine dental examinations; however, they may be referred when a medical check-up identifies the necessity for dental services. Recipients

younger than 12 months also can be seen for emergency dental services by the dentist for trauma or baby bottle tooth decay. Recipients up to age 21 may also self-refer for dental services.

§33.311. Requirements for Provider Enrollment and Continuing Participation.

(a) Dentists providing THSteps dental services must:

(1) be licensed by the SBDE;

(2) operate in accordance with the laws relating to the practice of dentistry and the rules and regulations of the SBDE;

(3) document the dental necessity of a stainless steel crown before the crown is applied by radiographs or other documentation methods established by the SBDE;

(4) comply with a minimum standard of documentation and record keeping for each of the dentist's patients, pursuant to 22 T.A.C. §§108.7-108.8, concerning SBDE minimum standards of care and documentation requirements, whether the patient's costs are paid privately or through the Texas Medicaid program;

(5) practice in the United States of America; and

(6) be enrolled as THSteps dental provider.

(b) Dentists who deliver emergency dental services as defined in §33.308 of this title (relating to Emergency Dental Services) to Medicaid and THSteps-eligible Texas recipients while the recipients are out of state are not required to be licensed by the SBDE, but must be authorized to provide Title XIX services in the state in which the services are delivered.

(c) Enrollment and continuing participation as a THSteps dental provider are voluntary. An application for enrollment may be denied and/or continuing participation may be terminated for any of the following reasons:

(1) disciplinary action(s) taken against the provider by the SBDE or the licensing entity of any other state;

(2) previous or current Medicaid or other federally funded health care program violation(s);

(3) prior imposition of sanctions by a regulatory entity of the State of Texas or any other state;

(4) failure of the provider to comply with THSteps program rules;

(5) a judgment in civil litigation or a criminal conviction based on fraud or abuse in Medicaid or any other federally funded health care program in any state. This includes a plea into a first offender program, misdemeanor, or felony;

(6) failure to comply with Family Code, §231.006, regarding payment of child support;

(7) notification from the HHSC OIE of adverse action taken against the provider; or

(8) any other reason authorized by rules, regulations, statute, or contract.

(d) A provider shall cease providing THSteps services and notify TDH, HHSC or its designee if the SBDE suspends or revokes the provider's license, unless the suspension or revocation is probated in its entirety and without conditions or limitations.

§33.314. Charges to Recipients.

(a) A provider shall not require a down payment before providing Medicaid-allowable services to eligible recipients.

(b) A provider shall not charge recipients for missed appointments.

(c) If the denial or reduction of a dental claim is the result of any of the following errors that are attributed to the provider, a provider shall neither bill, nor take recourse against an eligible recipient for services that are within the amount, duration, and scope of benefits of THSteps:

(1) failure to submit a claim, including claims not received by the HHSC or its designee;

(2) failure to submit a claim within the filing deadlines;

(3) filing of an incorrect paper or electronic claim;

(4) failure to resubmit a corrected paper or electronic claim within the appropriate time period;

(5) failure to appeal a claim denial within the appropriate time period; or

(6) errors made in claims preparation, appeal submission, or the appeal process.

(d) A provider may bill a recipient for a dental service or item only if:

(1) a request for prior authorization or a claim for payment for the service or item did not establish dental necessity, the service or item is not a benefit of the Medicaid program, or the service or item is not allowable according to program rules and policy requirements; and

(2) the service or item was provided at the request of the recipient and the provider obtained a written client acknowledgment statement, as described in the manual, which was signed and dated by the recipient or the recipient's parent/guardian prior to the initiation of the specified dental service, and is retained in the recipient's dental record.

§33.315. Payment of Claims.

(a) The provider must accept payment by HHSC or its designee as payment in full for services.

(b) Providers will be reimbursed for allowable services delivered in accordance with applicable laws, regulations, operational instructions, and the provider agreement. Payment may be withheld or suspended for services not delivered in accordance with applicable rules and regulations. Medicaid payments will not be made for services that are allowable and payable by any other third-party insurer or assistance program.

(c) In the event of the provider's death, a completed claim will be considered for payment only if the executor of the estate signs the claim and the services were performed by the provider in accordance with the THSteps program requirements.

§33.317. Change to Another Provider.

(a) A provider may refer a recipient to another provider or discontinue treatment for any of the following reasons:

(1) treatment by a dental specialist, such as a pediatric dentist, periodontist, endodontist, orthodontist, or oral surgeon, is indicated;

(2) services needed are outside the skills or scope of practice of the initial provider; or

(3) documented failure by the recipient or the recipient's caretaker or guardian to keep appointments, documented noncompliance with the treatment plan, or documented conflicts with the recipient or recipient's family member(s).

(b) A recipient may select another provider if he or she so desires.

(c) The TDH may refer a recipient to another provider as a result of information obtained during a utilization review or resolution of a complaint from either the recipient or the provider or upon the provider's or recipient's documented request.

§33.318. Standards of Care.

(a) THSteps recipients or their parents or guardians who can give informed consent shall:

(1) receive information following an oral evaluation regarding:

(A) the dental diagnosis;

(B) scope of proposed treatment, including alternatives and risks;

(C) anticipated results; and

(D) need for administration of sedation or anesthesia, including risks.

(2) receive a full explanation of the treatment plan and give informed consent prior to its implementation.

(b) THSteps recipients shall:

(1) receive dental services specified in the treatment plan which meet the standards of care established by the laws relating to the practice of dentistry and the rules and regulations of the SBDE;

(2) receive dental services free from abuse or harm from the provider or the provider's staff; and

(3) receive only that treatment required to address documented dental necessity and which meets professionally recognized standards of health care as recognized by the SBDE.

(c) If the recipient is younger than 15 years of age and services are not provided by an exempt entity, the THSteps dental provider shall require that the recipient be accompanied by a parent, guardian, or another adult authorized by the parent or guardian to a THSteps dental appointment. If services are provided by an exempt entity, the exempt entity must, as a condition for reimbursement:

(1) obtain written consent to the services, which has not been revoked, from the child's parent or guardian, within the one-year period prior to the date services are provided; and

(2) encourage parental involvement in the management of the oral health care of the children receiving services from the clinic, program, or facility.

§33.319. Management of Complaints.

(a) The division administration has responsibility for the management of complaints and payments regarding dental providers and recipients. Complaints may be received in either written or verbal form and may originate from any source. In accordance with each agency's guidelines for referrals of complaints, the TDH shall refer a provider or recipient to the OIE, the SBDE, the TDH Office of Criminal Investigation, or the Texas Department of Human Services. The referral shall be in writing. If discrepancies or irregularities are reported to the TDH or found during a utilization review, the appropriate agency may take one or more administrative actions. The provider will be notified in writing of the review findings and of any proposed administrative action. This notification may occur before or after other action is taken by professional dental or governmental organizations.

(b) Referrals to other state agencies.

(1) The TDH shall refer to OIE based on OIE criteria. OIE criteria for referrals by the TDH include, but are not limited to, complaints or allegations of provider fraud or abuse, including program abuse; abuse or harm to a recipient; lack of medical or dental necessity; overbilling; soliciting or collecting unauthorized payments from recipients; or failure to refund payments to recipients. Such complaints or allegations shall be made in writing and forwarded to the OIE. The OIE may utilize staff from the TDH to assist in determining the validity of any complaints or allegations received. A TDH employee acting as an agent of OIE is governed by the parameters of authority and investigation for OIE.

(2) Complaints about the practice of dentistry as described in the Texas Dental Practice Act or the rules and regulations of the SBDE shall be made in writing to the SBDE.

(3) Allegations of fraud or program abuse committed by a THSteps recipient shall be reported to the appropriate authority for review of the allegations and determination of the appropriate action as defined in TDH policy.

§33.320. Performance of Dental Services.

All THSteps dental services shall be performed by the enrolled provider except for that work authorized to be done by a licensed dental hygienist, dental assistant, or dental technician in a dental laboratory on the premises where the dentist practices or in a commercial laboratory registered with the SBDE. The Texas Dental Practice Act and the rules and regulations of the SBDE define the scope of work that dental auxiliary personnel may perform. Any deviations from these practice limitations shall be reported to the SBDE and could result in sanctions or other actions being taken against the provider.

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

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301891
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 458-7236

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25 TAC §§33.305 - 33.309, 33.312 - 33.318

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

The repeals are proposed under the Health and Safety Code, §32.021, which allows the Texas Department of Health to establish rules governing the Medicaid program; the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with authority to adopt rules for its procedures and the performance of each duty imposed by law on the board, the department and the commissioner of health; and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's medical assistance program and are submitted by the department under its agreement with the Health and Human Services Commission to operate the Early and Periodic Screening, Diagnosis, and Treatment program, also known as THSteps, as authorized

under Acts 1991, 72nd Legislature, First Called Session, Chapters 15, §1.07.

The proposed repeals affect the Human Resources Code, Chapter 32.

§33.305. Emergency Dental Services.

§33.306. Allowable Services and Limitations.

§33.307. Eligibility for Texas Health Steps Dental Services.

§33.308. Requirements for Provider Enrollment and Continuing Participation.

§33.309. Termination of a Provider Agreement.

§33.312. Charges to Recipients.

§33.313. Payment of Claims.

§33.314. Claims--Time Limits, Submission, and Denial.

§33.315. Change to Another Provider.

§33.316. Standards of Care.

§33.317. Management of Complaints.

§33.318. Performance of Dental Services.

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

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301892
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER H. DENTAL UTILIZATION REVIEW

25 TAC §§33.331 - 33.333

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

The repeals are proposed under the Health and Safety Code, §32.021, which allows the Texas Department of Health to establish rules governing the Medicaid program; the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with authority to adopt rules for its procedures and the performance of each duty imposed by law on the board, the department and the commissioner of health; and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's medical assistance program and are submitted by the department under its agreement with the Health and Human Services Commission to operate the Early and Periodic Screening, Diagnosis, and Treatment program, also known as THSteps, as authorized under Acts 1991, 72nd Legislature, First Called Session, Chapters 15, §1.07.

The proposed repeals affect the Human Resources Code, Chapter 32.

§33.331. Orthodontic Services Limitations.

§33.332. Eligibility for Orthodontic Services.

§33.333. Payment Limitations for Orthodontic Services.

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

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301893
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 458-7236

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25 TAC §§33.331, 33.334, 33.351 - 33.358

The new section and amendments are proposed under the Health and Safety Code, §32.021, which allows the Texas Department of Health to establish rules governing the Medicaid program; the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with authority to adopt rules for its procedures and the performance of each duty imposed by law on the board, the department and the commissioner of health; and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's medical assistance program and are submitted by the department under its agreement with the Health and Human Services Commission to operate the Early and Periodic Screening, Diagnosis, and Treatment program, also known as THSteps, as authorized under Acts 1991, 72nd Legislature, First Called Session, Chapters 15, §1.07.

The proposed new section and amendments affect the Human Resources Code, Chapter 32.

§33.331. Purpose.

The purpose of the Dental Utilization Review process is to ensure program fiscal integrity and to respond to the federal mandate requiring that program dollars be spent only on services as allowed under THSteps and that the services be appropriately provided to eligible recipients.

§33.334. Post-payment Orthodontic Utilization Review.

(a) (No change.)

(b) As part of an orthodontic utilization review, a provider may be required to submit study models, [~~and~~] diagnostic work-up information and records at the provider's expense.

§33.351. Types of TDH [~~Department~~] Utilization Reviews.

(a) TDH, HHSC or its designee [~~The department or its claims processing contractor~~] may conduct utilization reviews through automated analysis of a provider's pattern(s) of practice, including peer group analysis. Such analysis may result in the subsequent conduct of an on-site utilization review. Utilization reviews may also be conducted [~~The department or its claims processing contractor may conduct utilization reviews~~] at the direction of OIE, according to HHSC rules.

(b) The TDH [~~department~~] may conduct dental utilization reviews which:

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

(c) Dental utilization reviews shall be based on written procedures and screening criteria which are evaluated and updated periodically with input from practicing dentists, the OHSAC, and/or the SBDE. Criteria shall be objective, clinically valid, and compatible with

established principles of dental care. The TDH [department] shall apply review and screening criteria with flexibility appropriate to the circumstances of each case.

§33.352. Selection of Dentists for TDH [Department] Utilization Review.

(a) An individual or group dental provider may be selected by the TDH [department] for a utilization review as a result of:

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

(3) information or complaints received by the TDH [department], except those alleging fraud or abuse or concerning the practice of dentistry as described in §33.319 [§33.317] of this title (relating to Management of Complaints).

(b) Providers suspected of program fraud or abuse shall [will] not be subject to a utilization review by the TDH [department, but will instead be referred to] . The TDH shall refer such providers to the OIE for disposition.

(c) The division shall refer complaints [Complaints] regarding the practice of dentistry [will be referred] to the SBDE.

§33.353. Notification to Provider of TDH [Department] On-Site Utilization Review.

(a) The TDH [department] shall give the provider at least 30 days written notice of the time and place of a utilization review, unless such notice would jeopardize an active investigation.

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

§33.354. Provider Cooperation.

(a) The provider, the provider's associate(s) in a group practice, or the provider's office staff shall not contact, examine, or treat recipients identified as part of the utilization review [(with the exception of emergency services as defined in §33.305 of this title (relating to Emergency Dental Services), or upon approval of the provider's request by the department)] from the time the provider receives written notification identifying the recipients to be reviewed until notified in writing by the TDH [department] that normal contacts may be resumed. There are two exceptions to this exclusion:

(1) for emergency services as defined in §33.308 of this title (relating to Emergency Dental Services); or

(2) upon approval of the provider's request by the TDH.

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

§33.355. Disposition of TDH [Department] Utilization Review Results.

The results of utilization reviews, either automated or on-site, shall be forwarded by the TDH or HHSC's designee [department or by its claims processing contractor] to the OIE for evaluation and final disposition. Results of a review which reflects no deviation from review standards shall [will] be forwarded [mailed] to the provider within 30 days of [in a timely manner upon] completion of the review.

§33.356. Recoupment of Overpayments as a Result of TDH [Department] Utilization Review.

If the results of a TDH [department] utilization review indicate overpayment for services delivered or that payment was made for services not delivered, recoupment is required. The appropriate agency or agency designee shall [will] notify the provider in writing of any overpayment identified and the method of recoupment to be used. [A provider's recoupment obligation may involve either or both of the following:]

[(1) the dollar amount of the discrepancies in the claims reviewed; or]

[(2) a dollar amount calculated by applying the monetary discrepancy rate found in the claims reviewed to all remaining claims for the types of services sampled with dates of service during the period under review.]

§33.357. Administrative Actions and/or Sanctions.

Evaluation of a utilization review may result in one or more of the following administrative actions or sanctions by the appropriate agency or the agency's designee:

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

(3) recoupment of any overpayment identified according to §33.356 of this title (relating to Recoupment of Overpayments as a Result of TDH [Department] Utilization Review);

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

§33.358. Referral for Investigation of Fraud or Program Abuse.

All allegation of Medicaid fraud and other unlawful activities will be reported to the appropriate authority for review of the allegations and determination of the appropriate action as defined in TDH policy. All complaints alleging quality of care issues will be referred to the appropriate licensing or regulatory authority. [Suspected cases of fraud or abuse will be immediately referred to the OIE. Department utilization reviews will not be initiated on any provider suspected of fraud or abuse.]

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

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301894
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER J. TEXAS HEALTH STEPS MEDICAL CASE MANAGEMENT

25 TAC §§33.501 - 33.506

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

The Texas Department of Health (department) proposes the repeal of §§33.501 - 33.506, concerning the Texas Health Steps Medical Case Management.

The proposed new rules for Case Management for Children and Pregnant Women will provide case management services to Medicaid eligible women of all ages who have a high risk pregnancy and to children from birth to 21 years of age with a health condition/health risk. The programs, Medicaid Case Management for High Risk Pregnant Women and High Risk Infants and the Texas Health Steps Medical Case Management will become one program due to the proposed repeal of §§32.301 - 32.305, §32.307, 33.501 - 33.506, and 37.81 -

37.86 of this title and will become proposed new sections of Chapter 27. The new program will provide a greater continuity of services for all eligible recipients.

Government Code, §2001.039, requires that each agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §§33.501 - 33.506 and determined that the proposed repeals are necessary because the subject of these rules will be incorporated into a new chapter proposed for adoption as described in this preamble.

The department published a Notice of Intention to Review §§33.501 - 33.506 in the *Texas Register* on December 10, 1999 (24 TexReg 11129). No comments have been received.

The proposed repeal of §§33.501 - 33.506 is necessary in order to combine services in new rules in Chapter 27, entitled Case Management for Children and Pregnant Women, of this title. Combining these sections in a new chapter will ensure integration of services to the eligible population for case management services, children with a health condition/health risk birth to 21 years and/or high-risk pregnant women of all ages. Specifically, the repealed sections cover definitions; eligible recipients; THSteps Medical Case Management services, services limitations, applicant and provider qualifications; and application, review and monitoring processes.

The department also proposes the repeal of §§32.301 - 32.305 and §32.307, of this title concerning case management for high-risk pregnant women and high-risk infants. Specifically these sections cover definitions; eligible individuals; case management services; service limitations; provider qualifications and the right to appeal. These sections are being proposed for repeal as they are repeated in §§37.81 - 37.86. Sections 32.301 - 32.305 and §32.307 were not repealed when §§37.81 - 37.86 were adopted.

The department at the same time is proposing the repeal of §§37.81 - 37.86 of this title concerning Medicaid case management for high-risk pregnant women and high-risk infants. Specifically, these sections cover introduction; definitions; case management services; provider qualifications; application and review process, and documents adopted by reference and will be integrated in the new Chapter 27 of this title.

The department also proposes new Chapter 27, Case Management for Children and Pregnant Women, §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13 and 27.15. The new sections are proposed as an effort to combine case management programs to meet the needs of pregnant women of all ages and children with a health condition/health risk birth to 21 years. Specifically, these new sections cover definitions; eligible recipients; case management service provisions; service limitations; applicant and provider qualifications; and application, review and monitoring processes.

The department provides health services to women and children in Texas under the authority of the Health and Safety Code, Chapter 32; the State Appropriations Act; and the Social Security Act, Title V. The Targeted Case Management Program for High Risk Pregnant Women and High Risk Infants was established under the authority of the Social Security Act, Title XIX, §1915(g). Section 1915(g) authorized states to provide case management as a distinct service to targeted populations, through a waiver from the Health Care Financing Administration (HCFA), now the Centers for Medicare and Medicaid Services or CMS. The Health and Human Services Commission (HHSC) provides authority to the department to propose rules to administer certain Medicaid program services in Texas. Human Resources Code, §22.0031, mandates case management for high-risk pregnant women and high-risk children to age one as provided under §1915(g) of the federal Social Security Act (42 U.S.C. §1396n). Case management for children up to age 21 is authorized under 42 U.S.C. §1396d.

The Government Code, §531.021, provides HHSC with the authority to propose rules to administer the state's medical assistance program. The current rules were submitted by the department under its agreement with HHSC to operate the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program, and as authorized under §1.07, Acts of the 72nd Legislature, First Called Session (1991), Chapter 15, as amended by the Acts of the 73rd Legislature, Chapter 747, §2. The purpose of these sections is to make available medically necessary medical case management services mandated by EPSDT program. In Texas, the EPSDT program is known as Texas Health Steps (THSteps).

The proposed new rules for Case Management for Children and Pregnant Women will provide case management services to Medicaid eligible women of all ages who have a high risk pregnancy and to children from birth to 21 years of age who have a health condition/health risk. The programs, Medicaid Case Management for High Risk Pregnant Women and High Risk Infants and The Texas Health Steps Medical Case Management, will become one program in the proposed new sections of Chapter 27 with the proposed repeal of §§32.301 - 32.305, 32.307, 33.501 - 33.506, and 37.81 - 37.86. The new program will provide, through a larger provider base, more continuity of services for all consumers who are eligible for these services. The new program will provide a greater continuity of services for all eligible recipients.

Ravi Rupsingh, M.P.A., Actuary, Actuary Analysis, HHSC, has determined for the first five years the repeals are in effect, there will be cost savings to the state through the combination of the two programs as described in this preamble. Total cost savings per year are $1,724,820, $6,153,493, $6,348,526, $6,549,411 and $6,745,893 in state fiscal years 2003, 2004, 2005, 2006 and 2007, respectively, for a total of $27,522,143 over these five state fiscal years. There will be no impact on local government.

Duane Thomas, Ph.D., Texas Department of Health, Director of Regional Case Management has also determined that for each of the first five years the repeals are in effect, anticipated public benefits include better access to primary care providers, preventative health services, other health services and community resources for children and pregnant women accessing the services. There will be costs to small businesses and micro-businesses. This was determined after concluding that the elimination of the Intake as a billable contact for Targeted Case Management for Pregnant Women and Infants providers will decrease the amount of reimbursement that these providers currently receive. The cost to small and micro-businesses for the first year of implementation is estimated to be $7,327 while the cost to large businesses for the first year of implementation is estimated to be $7,281. The estimated costs are based on the assumption that 70% of Targeted Case Management for Pregnant Women and Infants providers are large businesses and 30% of providers are small or micro-businesses. There will be no anticipated economic costs to persons who receive the services. The department has determined that the proposed repeals do not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking under Government Code, §2007.043.

Comments on the proposal may be submitted to Cossy Hough, LMSW-ACP, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 6664. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

A public hearing regarding this repeal will be held on April 8, 2003, from 1:00 p.m. to 4:00 p.m. at the Texas Department of Health, Board of Health Room, Room M739, 1100 West 49th Street, Austin, Texas 78756.

The repeals are proposed under the Health and Safety Code, §12.001 which provides the Board of Health (board) with the authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health; and under the Health and Safety Code, Chapter 32, which provides the board with the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; the Human Resources Code, §22.0031, which mandates case management for high risk pregnant women and high risk infants; the Human Resources Code, Chapter 32, which enables the state to provide medical assistance; the Government Code, §531.021, which provides HHSC with the authority to propose rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with HHSC to operate the EPSDT program, and as authorized under §1.07 of the Acts of the 72nd Legislature, First Called Session (1991), Chapter 15, as amended by the Acts of the 73rd Legislature, Chapter 747, §2.

The repeals affect the Health and Safety Code, Chapter 32, the Human Resources Code, §22.0031 and Chapter 32.

§33.501. Definitions.

§33.502. Eligible Recipients.

§33.503. THSteps Medical Case Management Services.

§33.504. Service Limitations.

§33.505. Applicant and Provider Qualifications.

§33.506. Application, Review and Monitoring Processes.

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

Filed with the Office of the Secretary of State on March 21, 2003.

TRD-200301863
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 458-7236

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CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES
SUBCHAPTER E. MEDICAID CASE MANAGEMENT SERVICES FOR HIGH RISK PREGNANT WOMEN AND HIGH RISK INFANTS

25 TAC §§37.81 - 37.86

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

The Texas Department of Health (department) proposes the repeal of §§37.81 - 37.86, concerning case management for high-risk pregnant women and high-risk infants.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §§37.81 - 37.86 and has determined that the proposed repeals are necessary because the subject of these rules will be incorporated into a new chapter proposed for adoption as described in this preamble.

The department published a Notice of Intention to Review §§37.81 - 37.86 in the *Texas Register* on January 28, 2000 (25 TexReg 602). No comments have been received.

The proposed repeal of §§37.81 - 37.86 is necessary in order to combine the affected sections in Chapter 27, entitled Case Management for Children and Pregnant Women. Combining these sections in this new chapter will ensure integration of services to the eligible population for case management services: children with a health condition/health risk birth to 21 years and/or high risk pregnant women of all ages. Specifically, the proposed repealed sections cover introduction, definitions, case management services; provider qualifications; application and review process; and documents adopted by reference.

The department also proposes repeal of §§32.301 - 32.305 and §32.307, of this title concerning case management for high-risk pregnant women and high-risk infants. Specifically these sections cover definitions; eligible individuals; case management services; service limitations; provider qualifications, and the right to appeal. These sections are being proposed for repeal as they are repeated in Chapter 37, §§37.81 - 37.86. Sections 32.301 - 32.305 and §32.307 were not repealed when §§37.81 - 37.86 were adopted. The proposed repeal is also necessary in order to combine the affected sections in a new chapter entitled Chapter 27, Case Management for Children and Pregnant Women.

The department at the same time is proposing the repeal of Early and Periodic Screening, Diagnosis and Treatment, Subchapter J, THSteps Medical Case Management Services, §§33.501 - 33.506. The repeal is necessary in order to combine these sections in new Chapter 27, Case Management for Children and Pregnant Women. Specifically, these sections cover definitions; eligible recipients; THSteps Medical Case Management services; service limitations; applicant and provider qualifications, and application, review and monitoring processes.

The department also proposes new Chapter 27, Case Management for Children and Pregnant Women, §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13 and 27.15. The new sections are proposed as an effort to combine case management programs to meet the needs of pregnant women of all ages and children with health conditions/health risk birth to 21 years. Specifically, these new sections cover definitions; eligible recipients; case management service provision; service limitations; applicant and provider qualifications; and application, review and monitoring processes.

The department provides health services to women and children in Texas under the authority of the Health and Safety Code, Chapter 32; the State Appropriations Act; and the Social Security Act, Title V. The Targeted Case Management Program for High Risk Pregnant Women and High Risk Infants was established under the authority of the Social Security Act, Title XIX, §1915(g). Section 1915(g) authorized states to provide case management as a distinct service to targeted populations, through a waiver from the Health Care Financing Administration (HCFA), now the Centers for Medicare and Medicaid Services or CMS. The Health and Human Services Commission (HHSC) provides authority to the department to propose rules to administer certain Medicaid program services in Texas. Human Resources Code, §22.0031, mandates case management for high-risk pregnant women and high-risk children to age one as provided under §1915(g) of the federal Social Security Act (42 U.S.C. §1396n). Case management for children up to age 21 is authorized under 42 U.S.C. §1396d.

The Government Code, §531.021, provides HHSC with the authority to propose rules to administer the state's medical assistance program. The current rules were submitted by the department under its agreement with HHSC to operate the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program, and as authorized under §1.07, Acts of the 72nd Legislature, First Called Session (1991), Chapter 15, as amended by the Acts of the 73rd Legislature, Chapter 747, §2. The purpose of these sections is to make available medically necessary medical case management services mandated by EPSDT program. In Texas, the EPSDT program is known as Texas Health Steps (THSteps).

The proposed new rules for Case Management for Children and Pregnant Women will provide case management services to Medicaid eligible women of all ages who have a high risk pregnancy and to children with a health condition/health risk from birth to 21 years of age. Two programs, Medicaid Case Management for High Risk Pregnant Women and High Risk Infants, and the Texas Health Steps Medical Case Management, will become one program in the proposed new sections of Chapter 27 and the repeal of §§32.301-32.305, 32.307, 33.501 - 33.506, and 37.81 - 37.86. The new program will provide a greater continuity of services for all eligible recipients.

Ravi Rupsingh, M.P.A., Actuary, Actuary Analysis, HHSC, has determined for the first five years the repeals are in effect, there will be cost savings to the state through the combination of the two programs as described in this preamble. Total cost savings per year are $1,724,820, $6,153,493, $6,348,526, $6,549,411 and $6,745,893 in state fiscal years 2003, 2004, 2005, 2006 and 2007, respectively, for a total of $27,522,143 over these five state fiscal years. There will be no impact on local government.

Duane Thomas, Ph.D., Texas Department of Health, Director of Regional Case Management has also determined that for each of the first five years the repeals are in effect, anticipated public benefits include better access to primary care providers, preventative health services, other health services and community resources for children and pregnant women accessing the services. There will be costs to small businesses and micro-businesses. This was determined after concluding that the elimination of the Intake as a billable contact for Targeted Case Management for Pregnant Women and Infants providers will decrease the amount of reimbursement that these providers currently receive. The cost to small and micro-businesses for the first year of implementation is estimated to be $7,327 while the cost to large businesses for the first year of implementation is estimated to be $7,281. The estimated costs are based on the assumption that 70% of Targeted Case Management for Pregnant Women and Infants providers are large businesses and 30% of providers are small or micro-businesses. There will be no anticipated economic costs to persons who receive the services. The department has determined that the proposed repeals do not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking under Government Code, §2007.043.

Comments on the proposal may be submitted to Cossy Hough, LMSW-ACP, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 6664. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

A public hearing regarding this repeal will be held on April 8, 2003, from 1:00 p.m. to 4:00 p.m. at the Texas Department of Health, Board of Health Room, M739, 1100 West 49th Street, Austin, Texas 78756.

The repeals are proposed under the Health and Safety Code, §12.001, which provides the Board of Health (board) with the authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health; and under the Health and Safety Code, Chapter 32, which provides the board with the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; the Human Resources Code, §22.0031, which mandates a program of case management for high risk pregnant women and high risk infants; the Human Resources Code, Chapter 32, which enables the state to provide medical assistance; the Government Code, §531.021, which provides HHSC with the authority to propose rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with HHSC to operate the EPSDT program, and as authorized under §1.07 of the Acts of the 72nd Legislature, First Called Session (1991), Chapter 15, as amended by the Acts of the 73rd Legislature, Chapter 747, §2.

The proposed repeals affect the Health and Safety Code, Chapter 32, the Human Resources Code, §22.0031 and Chapter 32.

§37.81. Introduction.

§37.82. Definitions.

§37.83. Case Management Services.

§37.84. Provider Qualifications.

§37.85. Application and Review Process.

§37.86. Documents Adopted by Reference.

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

Filed with the Office of the Secretary of State on March 21, 2003.

TRD-200301864
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER T. FAIR PLAN

DIVISION 1. PLAN OF OPERATION

28 TAC §§5.9910 - 5.9929

The Texas Department of Insurance proposes new Subchapter T, §§5.9910-5.9929 concerning the Fair Access to Insurance Requirements (FAIR) Plan of Operation developed by the FAIR Plan Governing Committee and submitted for approval to the Commissioner of Insurance pursuant to the Insurance Code Article 21.49A sec. 3(a). Several insurance companies who together write over 50% of the Texas homeowners insurance market are not currently writing new homeowners insurance policies. The largest writer of homeowners insurance in Texas with over 30% of the market, has not been writing new homeowners policies for over a year. Another large writer of homeowners insurance with approximately 20% of the homeowners market in force in Texas, is also not writing new homeowners policies. Many other insurers have continued to maintain restrictions or limitations on writing homeowners insurance and some insurers have withdrawn from the market. In addition, according to statistics obtained from the Surplus Lines Stamping Office of Texas, from February 28, 2002, to February 28, 2003, there has been a 184.4% increase in the homeowners premium written by surplus lines insurers, which indicates a significant increase in the writing of homeowners policies by surplus lines insurers. This increase is a clear indication that consumers are having difficulty obtaining or are finding it impossible to obtain homeowners insurance coverage through the voluntary market, and have had to obtain such coverage in the surplus lines market. Based on all of these factors it is possible that in some cases residential property homeowners are having to go without insurance coverage, due to unavailability and other factors. In addition, since the FAIR Plan Association started issuing policies on December 31, 2002, it has issued approximately 5000 residential property insurance policies, thus further evidencing the need for this program. Considering these facts, it is clear that the consumers seeking new homeowners insurance coverage are facing difficulty in obtaining or finding it impossible to obtain homeowners insurance coverage through the voluntary market. The new sections are necessary to implement Article 21.49A and to ensure that residential property insurance coverage is available to Texas residents. The purpose of proposed §§5.9910-5.9929 is to set forth and establish the structure, function, procedures and powers of the Texas FAIR Plan Association. Proposed §5.9910 sets forth the purpose of the Texas FAIR Plan Association (Association) as well as the purpose of the Plan of Operation. Proposed §5.9911 provides the definitions of terms to be used in the subchapter. Proposed §5.9912 provides for the formation and authority of the Governing Committee. Proposed §5.9913 sets forth the role of agents, minimum requirements and performance standards for agents, and the procedure for the payment of commissions. Proposed §5.9914 provides for the maximum limits of liability and other limitations on FAIR Plan policies. Proposed §5.9915 sets forth procedures for the inspections of property to be insured under FAIR Plan policies and the requirements for inspection reports. Proposed §5.9916 provides the procedures for adoption of application forms and approval of underwriting rules, rates, policy forms, and endorsements. Proposed §5.9917 sets forth the documentation the agents are required to maintain regarding an applicant's eligibility; rules and procedures for issuance or cancellation of binders; and rules and procedures for issuance, renewal, or cancellation of policies. Proposed §5.9918 sets forth the Association's options for servicing its policies and guidelines for establishing servicing standards. Proposed §5.9919 sets forth the appeals process for an applicant or affected insurer to appeal an action of the Association. Proposed §5.9920 sets out the immunity from liability and indemnification available to insurers, inspectors, the Association, the Governing Committee, their agents and employees, the Association administrator, the Commissioner, and the Commissioner's authorized representatives. Proposed §5.9921 authorizes the Association to purchase fidelity bonds for the purpose of reimbursing the Association for losses sustained due to fraud or dishonesty on the part of members of the Governing Committee, Association officers, or employees. Proposed §5.9922 describes the member insurers required to participate in the Association, how the proportions of participation are determined, and the procedures for Association and member meetings. If necessary, it provides the procedure for an initial assessment of the member insurers to facilitate the commencement of operations. Proposed §5.9923 sets forth the procedures for member insurer assessments and recoupment of assessments, for reapportioning assessments of an insolvent member insurer, and for assessments of member insurers who cease writing property insurance in Texas. Proposed §5.9924 sets forth the procedures for the Association to cede or purchase reinsurance and acquire other financing. Proposed §5.9925 sets forth the statistical reporting requirements of the Association. Proposed §5.9926 provides for the Association's treatment of excess funds. Proposed §5.9927 provides for the Association to file annual and quarterly financial statements. Proposed §5.9928 lists the additional powers of the Association and proposed §5.9929 provides for the severability of any section of this subchapter, or the application thereof, if it is determined to be invalid.

Marilyn Hamilton, associate commissioner, property and casualty division, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Hamilton has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be increased availability of residential property insurance to qualified citizens in areas of the state determined by the Commissioner to be underserved areas. There is no probable economic cost to persons required to comply with the sections because the sections set forth the Plan of Operations of the Texas Fair Plan Association, an entity created by Insurance Code Article 21.49A. There is no effect on small or micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 5, 2003 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, Mail Code 104-PC,

Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The sections are proposed under the Insurance Code Article 21.49A and §36.001. Article 21.49A sec. 3(a) authorizes the FAIR Plan Governing Committee to develop a plan of operation and submit it to the Commissioner of Insurance for his approval. Article 21.49A charges the Commissioner with the authority to supervise the Association and to approve and adopt by rule the plan of operation developed by the Governing Committee. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

The following article is affected by this proposal: Insurance Code Article 21.49A

§5.9910. Purpose.

The Texas FAIR Plan Association was established by Insurance Code Article 21.49A for the purpose of delivering residential property insurance to qualified citizens of Texas in areas determined by the Commissioner of Insurance to be underserved areas. The purpose of this plan of operation is to set forth and establish the structure, function, procedures and powers of the Texas FAIR Plan Association.

§5.9911. Definitions.

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

(1) Agent--Any person licensed by the Commissioner as a general lines property and casualty agent pursuant to Insurance Code Article 21.14. sec. 2.

(2) Applicant--Any person applying for insurance from the Association including any person designated by the applicant to be the applicant's representative at an inspection.

(3) Association--The Fair Access to Insurance Requirements (FAIR) Plan Association created under Insurance Code Article 21.49A.

(4) Commissioner--The Commissioner of Insurance of the State of Texas.

(5) Governing Committee--The Governing Committee of the Association authorized pursuant to Insurance Code Article 21.49A, sec. 3.

(6) Inspector--The individual(s) or organization(s) designated by the Association to make inspections to determine the condition of the properties for which residential property insurance is sought and to perform such other duties as may be authorized by the Association or the Commissioner.

(7) Insurable risk--Property that meets the underwriting rules of the Association for determining the insurability of the risk.

(8) Member insurer or member--An insurer licensed to write property and casualty insurance in Texas and writing residential property insurance in Texas, including reciprocal exchanges and Lloyds plan insurers.

(9) Residential property insurance--Coverage as defined in Insurance Code Article 21.49A §2(3), with the exception of farm and ranch owners and farm and ranch insurance as set forth in Insurance Code Article 5.13-2 sec. 1.

(10) Residential property insurance premiums--Net direct written premiums for residential property insurance for a calendar year as determined by the Texas residential property statistical plan.

(11) Underserved area--The areas of the State of Texas so designated by the Commissioner in §5.3701 of this chapter (relating to Designation of Underserved Areas for Residential Property Insurance for Purposes of the Insurance Code Article 21.49A).

(12) Underwriting rules--The underwriting rules for residential property insurance as developed by the Association and which have been filed with and approved by the Commissioner.

§5.9912. Governing Committee.

(a) The Association shall be governed by a Governing Committee.

(b) The Governing Committee shall be composed of 11 voting members appointed by the Commissioner as follows:

(1) five members who represent the interests of insurers;

(2) four public members; and

(3) two members who are licensed agents.

(c) The Commissioner or the Commissioner's designated representative from within the Texas Department of Insurance shall serve as an ex-officio non-voting member.

(d) To be eligible to serve on the Governing Committee as a representative of insurers, a person must be a full-time employee of an authorized insurer.

(e) Members of the Governing Committee shall serve a term of two years.

(f) To stagger the terms of the Governing Committee, five members shall be selected randomly by the initial Governing Committee to serve a one-year term. Those members may be reappointed for a full term.

(g) If a Governing Committee member representing the interest of an insurer vacates the position prior to the end of the term, then the insurer who employed the Governing Committee member shall appoint a replacement within 45 days to serve the remainder of the term. If the insurer fails to appoint a replacement, the Commissioner shall appoint a replacement to serve the reminder of the term.

(h) If any other Governing Committee member vacates a position prior to the end of the term, then the Commissioner shall appoint a replacement to serve the remainder of the term.

(i) The Governing Committee shall meet as often as may be required to perform the general duties of administration of the Association or at the request of the Commissioner. Seven of the members of the Governing Committee shall constitute a quorum.

(j) The Governing Committee may promulgate guidelines consistent with state law and the plan of operation to govern such internal operations as investments, accounting, audit, personnel, underwriting rules, inspections, and claims practices. The guidelines shall be in writing.

(k) The Governing Committee may appoint committees as it deems necessary to carry out the purpose and operations of the Association. Such committees may include an Executive Committee, a Reinsurance Committee, a Finance & Audit Committee, an Underwriting Committee, an Agent Relations Committee, a Depopulation Committee and a Claims Committee.

(l) The Governing Committee may undertake a public education program to assure that the services of the Association receive adequate public attention. The Governing Committee may adopt a written program for decreasing the overall utilization of the Association as a source of insurance. The Association may adopt depopulation plans to reduce the number of risks insured by the Association.

(m) The Governing Committee shall exercise all of the Association's powers not delegated to others pursuant to this plan of operation.

(n) The Governing Committee may propose amendments to the plan of operation to the Commissioner for approval.

§5.9913. Authority of Agents and Commissions.

(a) Upon request, an agent, may assist any owner of residential property in completion and submission of an application for insurance on forms prescribed by the Association.

(b) No agent, even if licensed to represent one or more member insurers of the Association with respect to policies not underwritten by the Association, shall hold himself out as an agent of the Association.

(c) A commission shall be paid pursuant to a commission schedule set by the Governing Committee and approved by the Commissioner. The commission shall be based on paid gross written premiums and subject to adjustment based on policy changes and cancellations. The agent shall remit the gross premium collected on an Association policy to the Association, and the Association will pay the commission.

(d) The Association shall establish minimum requirements and performance standards for agents who submit applications to the Association or renew business in the Association. These requirements and standards shall be designed to ensure the efficient transmission of applications, forms, notices, and money from the agent to the Association and visa versa, ensure the efficient operation of the Association, and the efficient and convenient servicing of applicants and policyholders. The Association may require that agents demonstrate and certify compliance with these requirements and standards. The Association shall have the power to bar an agent from submitting new applications to or renewing business in the Association if the agent refuses to demonstrate and certify compliance with these requirements and standards or the agent violates any of these requirements or standards. Such minimum requirements and performance standards shall be binding upon any agent as a condition of such agent's request for an inspection, submission of an application, receipt of commissions from the Association, or other act in connection with the Association. The Association may contract with agents who meet the Association's standards and may limit applications to the Association to those agents. The Association shall not be required to appoint agents.

(e) The Association may limit communications with agents to website communications only.

(f) An applicant may only apply to the Association through an agent.

§5.9914. Maximum Limits of Liability and Limitations.

(a) The maximum limits of liability for residential property insurance per location through the Association shall be $1,000,000 dwelling - $500,000 contents. The Association is authorized to reinsure some or all risks that are within or at these maximum limits.

(b) The Association may not provide windstorm and hail insurance coverage for a risk eligible for that coverage under Insurance Code Article 21.49.

(c) The Association may issue a policy that includes coverage for an amount in excess of a liability limit set forth in subsection (a) of this section, if the Association first obtains, from a reinsurer approved by the Commissioner, reinsurance for the full amount of policy exposure above the limits for any given type of risk.

(d) The premium charged by the Association for the excess coverage shall be equal to the amount of the reinsurance premium charged to the Association by the reinsurer, plus any payment to the Association that is approved by the Commissioner.

§5.9915. Inspections.

(a) The underwriting rules shall determine the inspection criteria for risks to be written by the Association. The Association may issue a policy of residential property insurance on certain types of risks without an inspection in accordance with the underwriting rules.

(b) An inspection shall be made only of property requiring an inspection to determine eligibility for Association coverage in accordance with the underwriting rules. The inspection shall be free of charge to the applicant. An inspection request may be made by the owner, his/her representative, or an agent.

(c) All inspection reports shall be in writing and shall contain the information necessary to determine eligibility for coverage pursuant to the Association's underwriting rules. After the inspection report has been completed, a copy of the completed inspection report and any photograph indicating the pertinent features of the building construction, maintenance, and occupancy shall be sent within ten days to the Association.

(d) The inspection report shall contain information describing:

(1) occupancy,

(2) information necessary for underwriting and rating,

(3) construction; and

(4) physical deficiencies.

(e) If an interior inspection is necessary to determine eligibility of property described in an application submitted to the Association, the inspector shall contact the applicant and arrange for the applicant to be present during the inspection. The inspector shall not recommend correction of physical deficiencies or advise the applicant whether the Association will provide coverage.

(f) The Association shall, as soon as practical but not to exceed thirty days after receipt of the inspection report, advise the applicant and agent of the following:

(1) If the inspector finds that the residential property meets the underwriting rules, the Association shall notify the applicant in writing and issue a policy or binder.

(2) The Association shall indicate to the applicant any condition charges that have been applied by the Association in accordance with §5.9917(h) of this subchapter (relating to Application, Binder, Policy Issuance, Renewal and Cancellation.)

(3) If the residential property is not insurable based on the underwriting rules, the Association shall notify the applicant in writing why the residential property is not insurable.

(g) If, at any time, the applicant makes improvements in the residential property or its condition that the applicant believes are sufficient to make the residential property insurable, an inspector shall reinspect the residential property upon request. The applicant for residential property insurance shall be eligible for one reinspection any time within 60 days after the initial inspection. If upon reinspection the residential property meets the Association's underwriting rules, the Association shall notify the applicant in writing and issue a policy or binder.

(h) If an inspection report shows that a property has unrepaired damages or is in violation of any building, housing, air pollution, sanitation, health, fire or safety code, ordinance or rule, or if an applicant otherwise has received written notice of any violation of a code, ordinance or rule, the applicant shall submit to the Association a detailed plan that indicates the manner and estimated period of time in which the violation will be corrected or the damage repaired. The Association shall not provide coverage unless the necessary corrections are completed to the satisfaction of the Association

(i) The Association may, for cause upon information or well-founded belief, without notice to the insured at any time during the policy term, inspect an insured property for the purpose of determining whether the property meets the underwriting rules. The Association need not afford an insured the opportunity to be present during a reinspection nor furnish the insured with a copy of a reinspection report, unless requested. Reinspections may also occur:

(1) upon change in type of occupancy, or

(2) upon a reasonable periodic schedule.

(j) The Association may cancel or refuse to renew a policy upon the basis of the reinspection report in accordance with policy terms and this plan of operation.

§5.9916. Application Forms, Underwriting Rules, Rates, Policy Forms and Endorsements.

(a) The Association shall adopt application forms. The forms shall be designed to obtain all of the information necessary for underwriting and rating the risk. Such forms may also elicit additional information that the Association may use to revise its rates, underwriting rules, policy forms and endorsements. An application is considered complete when every question on the application form is answered fully and is signed by a proposed named insured and submitted by the agent. The Association may independently verify the information in an application or request additional information from the applicant or other sources.

(b) The Association shall file with the Commissioner for approval the underwriting rules for Association policies prior to use. Such underwriting rules shall determine whether a residential property is an insurable risk eligible for Association coverage, and if eligible, what coverages, policy forms and endorsements can be offered for that risk. The underwriting rules shall be subject to the underwriting standards set forth in §§5.9914, 5.9915 and 5.9917 of this subchapter (relating to Maximum Limits of Liability and Limitations, Inspections, and Application, Binder, Policy Issuance, Renewal and Cancellation) and any other requirements set forth in the underwriting rules. Such rules shall include under what circumstances the Association may grant an agent permission to bind coverage.

(c) The Association shall file with the Commissioner for approval the proposed rates and supplemental rate information, including a manual of rating rules, to be used in connection with the issuance of Association policies or endorsements. No policies or endorsements shall be issued unless the Commissioner has approved the rates to be applied to the policy or endorsement:

(1) The Association rates must be set in an amount sufficient to carry all claims to maturity and to meet all expenses incurred in the writing and servicing of the business.

(2) The rate filing shall additionally provide for:

(A) premium installment payment plans including a servicing fee for those policyholders electing to use such a plan; and

(B) deductible options such as different dollar amounts, different percentages of property coverage limits, that may vary by coverage or peril insured against.

(d) The Association shall file with the Commissioner for approval policy forms and endorsements prior to use. The policy forms and endorsements that the Association will offer to applicants will be governed by its underwriting rules. The Association may offer its policy forms on either an actual cash value or a replacement cost value basis, based on its underwriting rules. Association policies shall not cover businesses or commercial risks even if they are operated in or from a residence. Association policies shall not cover motor vehicles.

§5.9917. Application, Binder, Policy Issuance, Renewal and Cancellation.

(a) An agent shall maintain and submit, at the request of the Association, written documentation that indicates that:

(1) At least two insurance companies, not in the same holding company as defined in Insurance Code Article 21.49-1, licensed to write and actually writing residential property insurance in Texas have declined to provide residential property insurance (the names of the two insurance companies shall be identified), and the applicant has not received a valid offer of comparable residential property insurance from an insurance company licensed in Texas, not including any surplus lines insurers; and

(2) There are no outstanding taxes, assessments, penalties or charges with respect to the property to be insured, except those covered under a properly filed deferral affidavit in compliance with §33.06 of the Property Tax Code; and

(3) The applicant has not received written notice from an authorized public entity stating that the property is in violation of any building, housing, air pollution, sanitation, health, fire or safety code, ordinance or rule.

(b) The Association may specify what documentation would fulfill the requirements of subsection (a)(1)-(3) of this section.

(c) The Association is under no obligation to issue residential property insurance unless the property would constitute an insurable risk in accordance with the Association's underwriting rules. The Association, in determining whether the property is insurable, shall give no consideration to the condition of surrounding property or properties, where such condition is not within the control of the applicant.

(d) The Association shall deliver a policy or binder to the agent upon acceptance of the risk. The Association shall pay the authorized commission to the agent.

(e) The effective date of coverage shall be no earlier than the date and time that the Association both accepts and binds the risk. The policy shall be issued in the name of the Association, as insurer.

(f) The Association may suspend the taking of applications in the state when issuance of binders and/or policies has been suspended by the Texas Windstorm Insurance Association. The Association may also suspend the taking of applications when and in the part of the state it finds that an ongoing event threatens to create an imminent danger of catastrophic losses.

(g) The policy shall be issued for a term of one year.

(h) If the property is found to be an insurable risk but the inspection reveals that there are one or more physical deficiencies, surcharges will be imposed in conformity with the rates and underwriting rules. If the physical deficiencies are corrected and verified, the surcharges shall be revised.

(i) In accordance with the underwriting rules of the Association except for subsection (k) of this section, at least 30 days prior to the expiration of an Association policy, the Association shall do one of the following:

(1) send an offer to the policyholder with a copy to the agent to renew the Association policy for a term of one year at the Association rates that will be in force on the effective date of the renewal;

(2) send an offer to the policyholder with a copy to the agent to renew the Association policy conditioned upon a change in coverage, limits and/or terms or conditions; or

(3) send a notice to the policyholder with a copy to the agent of nonrenewal of the Association policy.

(j) If a payment for an estimated premium, annual premium or any installment payment is refused or dishonored by the bank upon which it is drawn for any reason, coverage under the Association policy shall be cancelled for nonpayment of premium, and the Association shall send a notice of cancellation.

(k) Every two years starting with the second renewal, the policyholder shall reapply for residential property insurance in the voluntary market. If a diligent effort has been made and the policyholder is unable to obtain residential property insurance, as evidenced by two current declinations from insurers licensed to write property insurance and actually writing residential property insurance in the state, the policyholder will be eligible for renewal of Association coverage. If an Association policyholder receives a valid offer of comparable residential property insurance from an insurance company licensed by the State of Texas, other than a surplus lines carrier, then the policyholder is no longer eligible for coverage and the Association may nonrenew the policy.

(l) The Association shall not issue a policy to an applicant if the applicant or any proposed named insured is indebted to the Association on a prior Association policy. If the new Association policy has already been bound or issued, then the Association shall cancel that binder or policy and deduct from any return premium the amount that the Association is owed from the prior Association policy.

(m) Binders shall be issued for a definite period, not to exceed ninety days.

(n) Policies issued are not subject to flat cancellation and are subject to a minimum earned premium as stated in the underwriting rules.

(o) If an insurance policy will not be issued, the full earned premium must be charged.

(p) A binder shall terminate upon the acceptance of a risk by the Association and the payment of any premium due; or upon the cancellation of a risk and notice of reasons for the cancellation given to the applicant and agent.

(q) The Association shall not cancel a policy or binder issued by it, except:

(1) for a condition which would have been grounds for nonacceptance of the risk had such condition been known to the Association at the time of acceptance;

(2) for property that does not meet the underwriting rules;

(3) for nonpayment of premium, including nonpayment of premium on a prior Association policy;

(4) fraud;

(5) material misrepresentation;

(6) evidence of incendiarism by the insured or another acting on the insured's behalf; or

(7) at the written request of an insured.

(r) The Association shall send notice of cancellation, stating the reasons for cancellation to an insured and agent. The cancellation shall take effect in accordance with the policy provisions.

(s) Any cancellation notice to an insured, except for the cancellation set forth in subsection (q)(7) of this section, shall be accompanied by a statement that the insured has a right to appeal as provided in §5.9919 of this subchapter (relating to Right to Appeal).

(t) If a property meets all underwriting requirements, the Association shall calculate the actual annual premium. The Association shall remit a return premium to the applicant if the provisional binder premium exceeds the actual annual premium. The Association shall bill the applicant for additional premium if the actual annual premium exceeds the provisional binder premium.

(u) The Association shall cancel a binder on a pro rata basis. If an applicant requests cancellation of a binder, the Association shall cancel the binder on a pro rata basis.

§5.9918. Servicing of Policies.

(a) In accordance with the provisions of §5.9912(e) of this subchapter (relating to Governing Committee) the Association shall have the following options for servicing Association policies:

(1) Contract with one or more member insurers to service some or all of the policies.

(2) Contract with one or more non-member insurers to service some or all of the policies;

(3) Contract with one or more private non-insurers to provide some or all of the servicing of Association policies;

(4) Contract with one or more insurance pools for property and/or casualty insurance established by Texas law to provide some or all of the servicing of Association policies; and

(5) Service some or all of the Association policies itself.

(b) No entity, be it a member insurer, non-member insurer, private non-insurer, or insurance pool, can be compelled to contract with the Association to service some or all Association policies.

(c) The servicing contracts under subsection (a)(1)-(4) of this section shall establish servicing standards and provide for compensation to be paid to contractors.

(d) The Association may divide the servicing of an Association policy between two or more persons. For example, the Association may underwrite an Association policy itself, use a non-insurer contractor for premium billing and collection, and use insurer contractors to service policy claims.

(e) In establishing servicing standards for Association policies, the Association shall consider:

(1) the accessibility of the servicing entity for submission of applications by agents;

(2) the ability of the servicing entity to provide inspections;

(3) the accessibility of the servicing entity for policyholder inquiries about underwriting, premium billing, collection, and claims;

(4) the ability of the servicing entity to service claims; and

(5) the ability of the servicing entity to provide catastrophe claim services.

(f) The Association may contract with any insurer admitted to do business in Texas or any other entity holding the license required to perform such services.

(g) Regardless of the option used by the Association to service its policies, all policies shall be issued in the name of the Association.

§5.9919. Right to Appeal.

(a) Any applicant or affected insurer shall have the right to appeal any action or decision of the Association or inspector to the staff of the Association or its administrator. Each denial of insurance to an applicant shall be accompanied by a statement to the applicant and the agent that the applicant or affected insurer has the right to appeal and how an appeal can be made. Such appeal must be made in writing within thirty days after receipt of notice of the action or decision to be appealed.

(b) The staff of the Association or its administrator shall render its decision on the appeal and notify the applicant or affected insurer of its decision within forty-five days of receipt.

(c) Any applicant or affected insurer shall have the right to appeal to the Commissioner any action or decision under subsection (b) of this section. An appeal to the Commissioner shall be made within thirty days of the decision.

(d) The decision of the Commissioner of an appeal under subsection (c) of this section is a final order and is subject to judicial review as provided in Insurance Code Chapter 36.

§5.9920. Immunity from Liability and Indemnification.

(a) There is no liability on the part of, and no cause of action against insurers, the inspector, the Association, the Governing Committee, their agents or employees, the Association's administrator, the Commissioner or the Commissioner's authorized representatives, with respect to any inspections required to be undertaken by this subchapter; for any acts or omissions in connection with any required inspections; or for any statements made in any report or communication concerning the insurability of the property, in any findings required by the provisions of this subchapters or at any hearings conducted in connection with any required inspections.

(b) All liabilities under the policy to the policyholder, insureds and claimants are those of the Association. A servicing entity contracted by the Association or the Association's administrator to service the policy, even if a licensed insurer, has no liability under the policy to the policyholder, insureds or claimants. The Association's administrator has no liability under the policy to the policyholder, insureds or claimants.

(c) Each member of any Association committee, each Association officer, employee, member insurer, and member of the Governing Committee shall be indemnified by the Association against liability incurred in connection with the affairs of the Association. The Association shall indemnify each former, present, and future insurer, committee member, officer, and employee of the Association against, and each such insurer, committee member, officer, and employee shall be entitled without further act on his/her part of indemnity from the Association for, all costs and expenses (including the amount of judgments and the amount of reasonable settlements made with a view to the curtailment of costs of litigation, other than amounts paid to the Association itself) reasonably incurred by him/her in connection with or arising out of any action, suit, or proceeding in which he/she may be involved by reason of his/her being or having been an insurer, committee member, officer, or employee of the Association or of any other Association or company which he/she serves as a director, member, officer, or employee at the request of the Association, whether or not he/she continues to be such director, member, officer, or employee at the time of incurring such costs or expenses.

(d) However, such indemnity shall not include any costs or expenses incurred by any such insurer, committee member, officer, or employee in respect of matters as to which he/she shall be finally adjudged in any such action, suit, or proceeding to be liable for willful misconduct in the performance of his/her duty as such insurer, committee member, officer, or employee, or in respect of any matter in which any settlement is effected in any amount in excess of the amount of expenses which might reasonably have been incurred by such insurer, committee member, officer, or employee had such litigation been conducted to a final conclusion; provided, further, that in no event shall anything herein contained be so construed as to protect, or to authorize the Association to indemnify such insurer, committee member, officer, or employee against any liability to the Association or to its members to which he/she would otherwise be subject by reason of his/her willful misfeasance or malfeasance, bad faith, dishonesty, gross negligence, or reckless disregard of the duties or responsibilities involved in the conduct of his/her office or employment as such insurer, committee member, officer, or employee. The foregoing right of indemnification shall inure to the benefit of the heirs, executors, or administrators of each such insurer, committee member, officer, or employee and shall be in addition to all other rights to which such insurer, committee member, officer, or employee may be entitled as a matter of law.

§5.9921. Fidelity Bonds.

The Association is authorized to purchase fidelity bonds in the amounts required by the Governing Committee. The bonds shall reimburse the Association for any pecuniary loss it may sustain by any act or acts of fraud or dishonesty on the part of members of the Governing Committee, Association officers or employees in the discharge of their duties.

§5.9922. Relationship with Member Insurers.

(a) Each member insurer shall participate in the writings, expenses, assessments, profits and losses of the Association in the same proportion as a member insurer's net direct residential property insurance premiums written in Texas bears to the aggregate net direct residential property insurance premiums written by all member insurers in Texas as determined by the Texas residential property statistical plan. The Association, however, may adopt depopulation plans under which insurers who voluntarily write residential property insurance or take risks out of the Association will receive a credit.

(b) In response to a data call developed by the department, all members shall file annually by June 1, their residential property insurance written premiums for the prior calendar year with the department. The department shall provide this information filed by all members to the Association. The Association shall use this information to calculate each member's participation under subsection (a) of this section and to calculate any assessments under §5.9923 of this subchapter (relating to Assessments, Recoupments, Member Insolvency and Withdrawal).

(c) In order to facilitate the commencement of operations immediately after the adoption of this plan of operation, all members, if requested by the Association, shall file with the department their residential property insurance written premiums for calendar year 2001. Any data so requested shall be submitted by the members to the department within 30 days after the department has mailed the request. Any such data collected by the department, in coordination with other 2001 statistical/financial data for members that the department has, shall be provided to the Association upon request. The Association may use this data to calculate initial assessment percentages for all members. Each member shall be required to pay any start-up assessment request based on these initial percentages within 30 days after receipt of the assessment request. Any member company may challenge the accuracy of a

start-up assessment request after timely paying the start-up assessment request under protest. Payment of the disputed amount is a required predicate to challenging the accuracy of the start-up calculation. Any subsequent adjustments made to start-up assessment payments under protest shall be paid by (or remitted to) the challenging member company within 30 days after the agreement or final order that establishes the correct start-up assessment request amount. The Association may issue more than one start-up assessment request using the initial assessment percentages until new percentages can be calculated based on data for the year ended December 31, 2002 and thereafter. Time frames and procedures for payment of assessments other than a start-up assessment are governed by other provisions of this plan of operation.

(d) There shall be an annual meeting of the Association and its member insurers at a time and place fixed by the Governing Committee.

(e) A special meeting of the Association and its member insurers may be called by the Governing Committee at such time and place designated by the Governing Committee.

(f) Ten days notice of an annual or special meeting with member insurers shall be given in writing by the Governing Committee to member insurers. Notice of any meeting shall be accompanied by an agenda for the meeting.

§5.9923. Assessments, Recoupments, Member Insolvency and Withdrawal.

(a) Should a deficit occur in the Association, the Association shall assess member insurers to cover such deficit. The Association shall determine annually any deficit or surplus for each calendar year period that the Association is operational or has outstanding liabilities.

(b) In addition to the start-up assessment authority provided by §5.9922(c) of this subchapter (relating to Relationship with Member Insurers), the Governing Committee may at any time levy an interim assessment against member insurers to provide necessary operating funds.

(c) Each member insurer may recoup assessments levied against it under subsections (a), (b) and (d) of this section and §5.9922 of this subchapter by adding a premium surcharge on every property insurance policy issued or renewed for a three year period beginning ninety days after the date of the assessment by the Association. The amount of the surcharge shall be calculated on the basis of a uniform percentage of the premium on such policies equal to one-third of the ratio of the amount of an insurer's assessment to the amount of its direct earned premiums as reported on Statutory Page 14 in its annual financial statement to the department for the calendar year immediately preceding the year in which the assessment is made, such that over the period of three years the aggregate of all such surcharges by an insurer shall be equal to the amount of the assessment of such insurer. The minimum surcharges on a policy may be $1; all surcharges may be rounded to the nearest dollar (50 cents and higher rounded up to next dollar and 49 cents or less rounded down). A surcharge is not subject to premium tax unless so determined by the Comptroller of Public Accounts.

(d) If any member insurer fails to pay the assessment for its proportionate part of any loss or expense because the member insurer is insolvent, and the Governing Committee determines that the assessment cannot be collected within a reasonable period of time, the unpaid assessment shall be paid by the remaining member insurers, each contributing in the manner provided by Insurance Code Article 21.49A, sec. 3 (e) (2), but without regard to the premium writings of the insolvent member insurer. The insolvent member insurer shall remain liable to the Association for the full amount of the assessment. If the insolvent member insurer later pays any or all of its assessment, the Association shall credit or reimburse the remaining members insurers in the same proportion as used in calculating each member insurer's contribution toward the unpaid assessment.

(e) No refund which would otherwise be paid under the plan of operation shall be paid to a member if it is no longer a member because it withdrew from writing residential property insurance in Texas, or to the liquidator, receiver, conservator, or statutory successor of a member insurer until the assessment of the member insurer has been paid in full. Any refund shall be first applied as a set-off against any assessment or other monies owed to the Association. Any balance remaining after the set-off shall be paid to the member insurer or its liquidator, receiver, conservator, or statutory successor of the member insurer.

(f) If a member ceases writing residential property insurance in Texas, it shall remain liable for any assessments that have already been made, and it shall be liable for any assessment that will be made covering the calendar year in which it had any direct earned premium for residential property insurance in Texas and/or any prior calendar years. Assessments will be based on the last year the company had written premiums. It shall not be liable for any assessments covering the calendar year next following the calendar year that it last had direct earned premium for residential property insurance in Texas.

(g) Each insurer shall remit to the Association payment in full of its assessed amount within 30 days of the receipt of notice of assessment. If an insurer fails to remit its assessed amount after the 40th day the Association shall report the failure to the Commissioner who shall immediately take action to suspend or revoke such insurer's certificate of authority to transact the business of insurance in the State of Texas until such time as the Association certifies to the Commissioner that such assessment has been paid in full. Suspension of an insurer's certificate of authority to transact business in the State of Texas shall not affect the right of the Association to proceed against such insurer in any court for any remedy provided by law or contract to the Association, including, the right to collect such insurer's assessment. In addition to any other remedy, the Governing Committee may offset assessments due from an insurer against any amounts in any account of such delinquent insurer. A member by mailing payment of its allocated amount of assessment, as provided herein, shall not waive any right it may have to contest the computation of its allocated amount of assessment. Such contest shall not, however, toll the time within which assessments shall be paid or the report to be made to the Commissioner or the action to be taken by the Commissioner upon receipt of such report.

§5.9924. Reinsurance and Other Financing.

(a) The Association may cede or purchase reinsurance in the name of the Association or on behalf of member insurers on eligible risks written through the Association.

(b) The Association may not assume reinsurance without the prior consent of the Commissioner.

(c) The Association is authorized to arrange for and consummate a taxable or tax-exempt borrowing or borrowings of money or lines of credit for the Association to meet its anticipated financial obligations, including, the funding of Association claims in the event of a catastrophe.

§5.9925. Statistics.

(a) Every insurance policy issued by the Association shall be separately coded for statistical purposes.

(b) The Association shall comply with any reporting requirements of the Commissioner concerning its underwriting operations and experience. The reports shall be made at least annually in such form and detail as may be required by the Commissioner.

(c) The Association shall report its premium, loss and expense experience in accordance with a statistical plan promulgated by the Commissioner.

(d) The Association shall submit to the Commissioner periodic reports including:

(1) the number of risks inspected,

(2) the number of risks accepted,

(3) the number of risks conditionally accepted,

(4) the number of reinspections made,

(5) the number of risks declined, and

(6) any other necessary information.

§5.9926. Excess Funds.

(a) Association funds in excess of that needed to carry all incurred claims to maturity and to meet the expenses incurred in the writing and servicing of that business and to meet the expenses of the Association shall be added to the reserves of the Association for future catastrophes, and possible fluctuations in existing claim reserves.

(b) Subject to the approval of the Commissioner, any funds in excess of the amounts in subsection (a) of this section shall be distributed to the Association members to reimburse each member for any and all costs, taxes and other expenses associated with participation in the Association using the same formulas as for assessments of Association members.

§5.9927. Annual and Quarterly Financial Statements.

The Association shall file annual and quarterly financial statements with the Commissioner in the form prescribed by the Commissioner. Annual financial statements shall be prepared and furnished to the Commissioner on or before March thirty-first of the following year.

§5.9928. Additional Powers of the Association.

The powers of the Association shall include the following:

(1) the ability to sue;

(2) the ability to own or lease real estate for its operations;

(3) the ability to retain the services of experts to aid it in carrying out its operations;

(4) the ability to generally contract for goods and services needed to carry out its operations;

(5) the ability to invest its funds in accordance with Insurance Code Article 2.10; and

(6) the ability to conclude its affairs should the FAIR Plan be deactivated by the Commissioner.

§5.9929. Severability.

If any section of this subchapter or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other section or application of the section which can be given effect without the invalid section or application, and to this end the sections of this subchapter are declared to be severable.

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

Filed with the Office of the Secretary of State on March 19, 2003.

TRD-200301829

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 463-6327

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PART 2. TEXAS WORKERS' COMPENSATION COMMISSION

CHAPTER 110. REQUIRED NOTICES OF COVERAGE

SUBCHAPTER A. CARRIER NOTICES

28 TAC §110.1

The Texas Workers' Compensation Commission (commission) proposes amendments to §110.1, concerning Requirements for Notifying the Commission of Insurance Coverage.

By Advisories 2002-07 and 2002-07B the commission has implemented the electronic reporting of insurance coverage information by commercial insurance carriers through designated data collection agents effective September 1, 2002. The International Association of Industrial Accident Boards and Commissions (IAIABC) Proof of Coverage (POC) Release 2 standard is used as the reporting medium. The commission has received requests from several carriers to report workers' compensation insurance coverage represented by binders using the IAIABC POC binder transaction to meet the reporting requirements of §110.1. The proposed revisions more clearly state how binders are used in the Texas workers' compensation system and clarify the requirements for reporting workers' compensation insurance coverage to the commission.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Proposed §110.1 adds new subsection (a), which clarifies that a binder constitutes an approved insurance policy as referenced in Texas Labor Code §401.011(44)(A), and new subsection (b), which defines, for purposes of the rule as proposed, the term "insurance coverage information." The proposed amendments redesignate the remaining subsections as (c) through (l) accordingly. Proposed subsection (e) clarifies that the requirements of that subsection apply to employers who do not have workers' compensation insurance coverage.

Another proposed change is the addition of language to proposed subsection (h)(2), requiring an insurance carrier to notify the commission if it cancels a binder before it issues a policy. Although no changes are proposed to current subsection (i), it should be noted that the proposed changes to the rule make this subsection applicable to situations in which a binder is canceled prior to the issuance of a policy. That is, workers' compensation insurance coverage, including coverage that becomes effective pursuant to the issuance of a binder, remains in effect until the later of the circumstances enumerated in current subsection (i).

Finally, the proposed section is amended by the addition of certain verbiage for clarity and for consistency in terminology.

Brent Hatch, Director of Customer Relations and Customer Services, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state

or local governments as a result of enforcing or administering the rule because the rule does not change current practice.

Local government and state government as covered regulated entities will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Hatch has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be as follows:

The proposed amendment clarifies that the submission of binder information by an insurance carrier is acceptable to the commission for purposes of meeting the notification requirements of the rule. All system participants will benefit from the proposed amendment because it provides more complete and accurate information regarding the existence of workers' compensation coverage for Texas employers.

There will be no anticipated economic costs to persons who are required to comply with the rule as proposed because the proposed rule does not change current practice.

There will therefore be no costs of compliance for small businesses and no adverse economic impact on small businesses or micro-businesses.

Comments on the proposal or requests for public hearing must be received by 5:00 p.m., May 5, 2003. You may comment via the Internet by accessing the commission's website at www.twcc.state.tx.us, clicking on "Laws, Rules & Forms" and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Nell Cheslock, Legal Services, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

The amendments are proposed under Texas Labor Code §401.024, which allows the commission to collect coverage information by electronic transmission; Texas Labor Code §402.042, which authorizes the Executive Director to prescribe the form, manner, and procedure for transmission of information to the commission; Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Texas Workers' Compensation Act (Act); Texas Labor Code Chapter 406, Subchapter A, which addresses workers' compensation coverage election and security procedures, including Texas Labor Code §406.006, which requires insurance carriers to report employer coverage and claim administration contact information to the commission; Texas Labor Code §406.008, which requires insurance carriers to report changes they initiate to employer coverage to the commission; and Texas Labor Code §406.009, which requires the commission to collect and maintain coverage information; monitor and enforce the compliance of the timely submission of coverage information and authorizes the commission to adopt rules as necessary to enforce the provisions of Texas Labor Code Chapter 406, Subchapter A.

No other code, statute, or article is affected by this rule action.

§110.1. Requirements for Notifying the Commission of Insurance Coverage.

(a) An approved insurance policy, as referenced in Texas Labor Code §401.011(44)(A), includes a binder, which serves as evidence of a temporary agreement that legally provides workers' compensation insurance coverage until the approved insurance policy is issued or the binder is canceled.

(b) As used in this section, "insurance coverage information" includes information regarding whether or not an employer has workers' compensation insurance coverage and, if so, information about the means of insurance coverage used.

(c) [~~(a)~~] This rule applies to employers whose employees are not exempt from coverage under the Workers' Compensation Act (the Act), and to insurance carriers. It does not apply to employers whose only employees are exempt from coverage under the Act. Certified Self Insurers are also subject to requirements specified in Chapter 114 of this title (relating to Self-Insurance).

(d) [~~(b)~~] Employers and insurance carriers shall submit to the commission, or its designee, insurance coverage information in the form and manner prescribed by the commission. The commission may designate and contract with a data collection agency to collect and maintain insurance coverage information.

(e) [~~(c)~~] Employers who do not have workers' compensation insurance coverage are required to provide insurance coverage [~~notice of non-coverage~~] information in the form of a notice of non-coverage, in accordance with subsection (d) [~~(b)~~] of this section as follows:

(1) if the employer elects not to be covered by workers' compensation insurance, the earlier of the following:

(A) 30 days after receiving a commission request for the filing of a notice of non-coverage and annually thereafter on the anniversary date of the original filing;

(B) 30 days after hiring an employee who is subject to coverage under the Act, and annually thereafter on the anniversary date of the original filing;

(2) if the employer cancels coverage without purchasing a new policy or becoming a certified self-insurer, within ten days after notifying the insurance carrier and annually thereafter on the anniversary of the cancellation date of the workers' compensation policy; or

(3) if the employer is principally located outside of Texas, within ten days after receiving a written request from the commission for information about the coverage status of its Texas operations.

(f) [~~(d)~~]When an employer elects to cancel coverage, the effective date of that cancellation shall be the later of:

(1) 30 days after filing the notice of non-coverage with the commission; or

(2) the cancellation date of the policy.

(g) [(e)] The workers' compensationinsurance coverage shall be extended until the effective date of withdrawal as established in subsection (f)[(d)] of this section, and the employer is obligated to pay premiums which accrue during this period.

(h) [(f)] Insurance carriers are required to provide insurance coverage information for insured Texas employers in accordance with subsection (d) [(b)] of this rule as follows:

(1) within ten days after the effective date of coverage or endorsement and annually thereafter no later than ten days after the anniversary date of coverage;

(2) 30 days prior to the date on which cancellation or nonrenewal becomes effective if the insurance carrier cancels[,]the workers' compensation insurance coverage, [or] does not renew the workers' compensation insurance coverage[, an employer's workers' compensation coverage] on the anniversary date, or cancels a binder before it issues a policy; [or]

(3) ten days prior to the date on which the cancellation becomes effective if the insurance carrier cancels an employer's workers' compensation coverage in accordance with Texas Labor Code, §406.008(a)(2); or[.]

(4) within ten days after receiving notice of the effective date of cancellation from the covered employer because the employer switched workers' compensation insurance carriers.

(i) [(g)] Workers' compensation insurance [Insurance] coverage remains in effect until the later of:

(1) the end of the policy period, or

(2) the date the commission and the employer receive the notification from the insurance carrier of coverage cancellation or nonrenewal and the later of:

(A) the date 30 days after receipt of the notice required by Texas Labor Code, §406.008(a)(1);

(B) the date ten days after receipt of the notice required by Texas Labor Code, §406.008(a)(2); or

(C) the effective date of the cancellation if later than the date in paragraphs (1) or (2) of this subsection.

(j) [(h)] "Claim administration contact" as it applies to this chapter is the person responsible for identifying or confirming an employer's coverage information with the commission. Each insurance carrier shall file a notice with the commission of their designated claim administration contact not later than the 10th day after the date on which the coverage or claim administration agreement takes effect. A single administration address for the purpose of identifying or confirming an employer's coverage status shall be provided. If the single claims administration contact address changes, the insurance carrier shall provide the new address to the commission at least 30 days in advance of the change taking effect. This information shall be filed in the form and manner prescribed by the commission.

(k) [(i)] An insurance carrier may elect to have a servicing agent process and file all coverage information, but the insurance carrier remains responsible for meeting all filing requirements of this rule.

(l) [(j)] Notwithstanding the other provisions of this section, if an employer switches workers' compensation insurance carriers, the original policy is considered canceled as of the date the new coverage takes effect. Employers shall notify the prior insurance carrier of the cancellation date of the original policy, in writing, within ten days of the effective date.

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

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301885
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 804-4287

CHAPTER 124. CARRIERS: REQUIRED NOTICES AND MODE OF PAYMENT

28 TAC §124.2

The Texas Workers' Compensation Commission (the commission) proposes amendments to §124.2, concerning Carrier Reporting and Notification Requirements.

In order to properly execute its responsibilities under the Texas Labor Code, the commission must associate reported workers' compensation claims with the coverage information reported by the insurance carrier (as defined in Texas Labor Code §401.011(27)) under §110.1 of this title (related to Requirements for Notifying the Commission of Insurance Coverage). To facilitate this process and allow for its automation, the commission proposes to modify §124.2(c)(1) to require that specific items of coverage information (the insurance carrier's Federal Employer Identification Number (FEIN), the employer's policy number and the policy period) be reported by the insurance carrier in conjunction with the information from the Employer's First Report of Injury and that this information be identical with that reported under §110.1 for the employer associated with the claim.

Section 124.2(c)(4) is proposed to be modified to require that the items of coverage information specified in §124.2(c)(1) be reported to the commission through a "Change" transaction if they are not available when the First Report of Injury is submitted.

The provisions for reporting the required coverage information are already incorporated in the International Association of Industrial Accident Boards and Commissions (IAIABC) Electronic Data Interface First Report of Injury currently in use by the commission pursuant to subsection (b) of the rule. No changes to the current First Report of Injury record layout are required by the proposed rule.

Analysis of the commission's database indicates that of the first reports of injury submitted by EDI, all of them contain the carrier's FEIN (mandatory field), approximately 86 percent contain the policy number, and approximately 70 percent contain the policy period information. However, of the first reports of injury containing the policy number, in only 58 percent of the cases does the policy number match the policy number reported through the coverage reporting system. This rule change is designed to emphasize the importance of consistent reporting of these key data elements which will enable the automated association of claim and coverage information in the commission's new automation system (TXCOMP).

All participants in the workers' compensation system interact with the insurance carrier (as defined in Texas Labor Code

§401.011(27)) or the third party representing the insurance carrier for various claim administration functions such as coverage confirmation, claim adjustment, medical billing and preauthorization. The commission is continuously asked for this contact information but does not currently collect or maintain it in a standardized or accessible form. The commission proposes to add §124.2(n) to require each insurance carrier to create and maintain a single World Wide Web (Web) page containing this information and to furnish the Uniform Resource Locator (URL) of that Web page to the commission through its Austin representative. The commission will then make that URL available to the public and the commission staff through its Web site.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Proposed subsection 124.2(c)(1) requires that certain coverage information (insurance carrier FEIN, policy number and policy period) be reported by the insurance carrier in conjunction with the information from the Employer's First Report of Injury and that this information be identical with that reported under §110.1 for the employer associated with the claim.

Proposed subsection 124.2(c)(4) requires that the coverage information required by subsection 124.2(c)(1) be reported through a Change transaction if it is not available when the First Report of Injury is submitted to the commission.

Proposed new subsection 124.2(n) is added to state the requirement for each insurance carrier to create and maintain a Web page containing contact information for the claim service functions of coverage verification, claim adjustment, medical billing, pharmacy billing if different from medical billing, and preauthorization request processing. The organization and presentation of this information should reflect the insurance carrier's business organization and may be done geographically, functionally, by specific insured, or a combination of these. Telephone and facsimile numbers, mailing address, and company and/or department email address information for each function shall be provided. It is anticipated that an insurance carrier's Austin representative will provide the URL for its Web page to the commission through its access to the commission's automation system (TXCOMP) for the purpose of inputting and maintaining the carrier's correct URL.

Brent Hatch, Director of Customer Relations and Customer Services, has determined that for the first five-year period the proposed rule is in effect there will be minimal fiscal implications for state or local governments as a result of enforcing or administering the proposed rule because it does not impose additional duties for these entities. Self-insured governmental entities could incur some nominal costs associated with procedural changes required to ensure consistency of information reported between coverage reporting under §110.1 and claim reporting under §124.2 as proposed. They may also incur nominal costs associated with development of the required Web page if it cannot be accommodated within the routine maintenance and updating of their Web site.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. Hatch has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be as follows:

The public will benefit from the proposed change in that the commission will be able to more quickly, accurately and efficiently associate a reported workers' compensation claim with the related coverage information and therefore more accurately advise the parties to the claim on status and actions relating to the claim. The commission will also be able to provide to the public, workers' compensation system participants, and to the commission staff access to the contact information for the insurance carrier's various claim administration functions in a comprehensive and easily accessible manner.

There may be some economic costs to persons who are required to comply with the rule as proposed. Both the Coverage and Claim reporting channels are already established and are not changed by this proposal. However, procedural changes may be required, depending on the regulated entity's current practices. Should a regulated entity elect to modify its automation systems in order to facilitate compliance with the proposed rules, then significant economic costs could be incurred. The only new requirement is consistency of reporting between the two reporting channels.

Persons who are required to comply with the rule as proposed may also incur nominal costs associated with development of the required Web page if it cannot be accommodated within the routine maintenance and updating of their current Web site. The required Web page is a simple, static, content only page with no functionality required. It can be developed and hosted using the most basic of Web technology and can be either a component of an existing Web site or a single page hosted on an Internet accessible server.

There will be no different costs of compliance for small businesses or micro-businesses as compared to large businesses. There will be no adverse economic impact on small businesses or micro-businesses.

Comments on the proposal or requests for public hearing must be received by 5:00 p.m., May 5, 2003. You may comment via the Internet by accessing the commission's website at www.twcc.state.tx.us, clicking on "Laws, Rules & Forms" and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Nell Cheslock, Legal Services, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Commenters are also requested to provide the commission with any concerns or suggestions regarding the information required by new subsection (n) of the rule as proposed, particularly the types of contact information specified in subsection (n)(1) and whether the rule should require any additional information or, perhaps, less information.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the

rule as proposed, in whole or in part, may wish to comment to that effect.

The amendments are proposed under the Texas Labor Code, §401.011(27) which defines an insurance carrier, Texas Labor Code, §402.042, which authorizes the Executive Director to prescribe the form, manner, and procedure for transmission of information to the Commission; Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code, §406.006, which requires insurance carriers to report employer coverage and claim administration contact information to the commission; and Texas Labor Code, §409.005, which requires the insurance carrier to file the report of injury on behalf of the policyholder.

No other code, statute, or article is affected by this rule action.

§124.2. Carrier Reporting and Notification Requirements.

(a) An insurance carrier shall notify the Commission and the claimant of actions taken on, or events occurring in a claim as required by this title.

(b) The Commission shall prescribe the form, format, and manner of required electronic submissions through publications such as advisory(ies), instructions, specifications, the *Texas Electronic Data Interchange Implementation Guide*, and trading partner agreements. Trading partners will be responsible for obtaining a copy of the International Association of Industrial Accident Boards and Commissions (IAIABC) Electronic Data Interchange Implementation Guide.

(c) The carrier shall electronically file, as that term is used in §102.5(e) of this title (relating to General Rules for Written Communication To and From the Commission), with the Commission:

(1) the information from the original Employer's First Report of Injury and the insurance carrier's Federal Employer Identification Number (FEIN), policy number, policy effective date and policy expiration date reported under §110.1, of this title (relating to Requirements for Notifying the Commission of Insurance Coverage) for the employer associated with the claim,not later than the seventh day after the later of:

(A) receipt of a required report where there is lost time from work or an occupational disease; or

(B) notification of lost time if the employer made the Employer's First Report of Injury prior to the employee experiencing absence from work as a result of the injury;

(2) any correction of Commission-identified errors in a previously accepted electronic record as provided in §102.5(e) of this title (Correction);

(3) information regarding a compensable death with no beneficiary (Compensable Death No Beneficiaries/Payees) not later than the tenth day after determining that an employee whose injury resulted in death had no legal beneficiary; and

(4) a change in an electronic record initiated by carrier (Change), the coverage information required by subsection (c) (1) of this section if not available when the First Report of Injury was submitted to the commission [~~as needed~~] and any change in a claimant or employer mailing address within 7 days of receipt of the new address.

(d) The carrier shall notify the Commission and the claimant of a denial of a claim (Denial) based on non-compensability or lack of coverage in accordance with this section and as otherwise provided by this title.

(e) The carrier shall notify the Commission and the claimant of the following:

(1) first payment of indemnity benefits on a claim (Initial Payment) within 10 days of making the first payment;

(2) change in the net benefit payment amount caused by a change in the employee's post-injury earnings (Reduced earnings) within ten days of making the first payment reflecting the change;

(3) change in the net benefit payment amount that was not caused by a change in employee's post-injury earnings, this includes but is not limited to subrogation, attorney fees, advances, and contribution (Change in Benefit Amount) within 10 days of making the first payment reflecting the change;

(4) change from one income benefit type to another or to death benefits (Change in Benefit Type) within 10 days of making the first payment reflecting the change;

(5) resumption of payment of income or death benefits (Reinstatement of Benefits) within 10 days of making the first payment;

(6) termination or suspension of income or death benefits (Suspension) within 10 days of making the last payment for the benefits.

(7) employer continuation of salary equal to or exceeding the employee's Average Weekly Wage as defined by this title (Full Salary) within:

(A) seven days of receipt of the Employer's First Report of Injury or a Supplemental Report of Injury (if the report included information that salary would be continued) if the carrier has not initiated temporary income benefits; or

(B) ten days of making the last payment of temporary income benefits due to the employer's continuation of full salary.

(f) Notification to the claimant as required by subsections (d) and (e) of this section requires the carrier to use plain language notices with language and content prescribed by the Commission. These notices shall provide a full and complete statement describing the carrier's action and its reason(s) for such action. The statement must contain sufficient claim-specific substantive information to enable the employee/legal beneficiary to understand the carrier's position or action taken on the claim. A generic statement that simply states the carrier's position with phrases such as "employee returned to work," "adjusted for light duty," "liability is in question," "compensability in dispute," "under investigation," or other similar phrases with no further description of the factual basis for the action taken does not satisfy the requirements of this section.

(g) Notification to the Commission as required by subsections (c), (d) and (e) of this section requires the carrier to use electronic filing, as that term is used in §102.5(e) of this title. In addition to the electronic filing requirements of this subsection, when a carrier notifies the Commission of a denial as required by subsection (d) of this section, it must provide the Commission a written copy of the notice provided to the claimant under subsection (f) of this section. The notification requirements of this section are not considered completed until the copy of the notice provided to the claimant is received by the Commission.

(h) Notification to the Commission and the claimant of a dispute of disability, extent of injury, or eligibility of a claimant to receive death benefits shall be made as otherwise prescribed by this title and requires the carrier to use plain language notices with language and content prescribed by the Commission. These notices shall provide a full and complete statement describing the carrier's action and its reason(s) for such action. The statement must contain sufficient claim-specific

substantive information to enable the employee/legal beneficiary to understand the carrier's position or action taken on the claim. A generic statement that simply states the carrier's position with phrases such as "no medical evidence to support disability," "not part of compensable injury," "liability is in question," "under investigation," "eligibility questioned" or other similar phrases with no further description of the factual basis for the action taken does not satisfy the requirements of this section.

(i) The Commission shall send an acknowledgment to the transmitting trading partner detailing whether an electronically submitted record was accepted, accepted with errors, or rejected. The acknowledgment shall be provided directly to the trading partner submitting the transmission, not through the Austin representative box identified in §102.5 of this title. If the record was accepted with errors in conditional elements, the carrier must correct the errors in accordance with §102.5 of this title.

(j) Except as otherwise provided by this title, carriers shall not provide notices to the Commission that explain that:

(1) benefits will be paid as they accrue;

(2) a wage statement has been requested;

(3) temporary income benefits are not due because there is no lost time;

(4) the carrier is disputing some or all medical treatment as not reasonable or necessary;

(5) compensability is not denied but the carrier disputes the existence of disability (if there are no indications of lost time or disability and the employee is not claiming disability); or

(6) future medical benefits are disputed (notices of which shall not be provided to anyone in the system).

(k) Written requests for a waiver of the electronic filing requirement for the Employer's First Report of Injury may be submitted to the Commission's executive director or his/her designee for consideration. Waivers must be requested at least annually and the requests must include, a justification for the waiver, the volume of the carrier's claims and total premium amounts, current automation capabilities, Electronic Data Interchange (EDI) programming status, and a specific target date to implement EDI. Waivers require written approval from the executive director and shall be granted at the discretion of and for the time frame noted by the Executive Director or his/her designee.

(l) If specifically directed by the Commission, such as through Commission advisory or the *Texas Electronic Data Interchange Guide*, the carrier may provide the information required in subsection (c), (d), or (e) of this section to the Commission in hardcopy/paper format.

(m) Notifications to the claimant and the claimant's representative shall be filed by facsimile or electronic transmission unless the recipient does not have the means to receive such a transmission in which case the notifications shall be personally delivered or sent by mail.

(n) Each insurance carrier shall provide to the commission, through its Austin representative in the form and manner prescribed by the commission, a single World Wide Web (Web) Uniform Resource Locator (URL) for a Web page that contains the contact information for all workers' compensation claim service administration functions performed by the insurance carrier either directly or through third parties.

(1) The contact information for each function shall include mailing address, telephone number, facsimile number, and email address as appropriate. The list of contacts shall include the following claim administration functions and shall be organized to reflect the insurance carrier's business practices (geographically, functionally, by specific insured, or combination of these):

(A) Coverage verification questions;

(B) Claim adjustment;

(C) Medical billing;

(D) Pharmacy billing (if different from medical billing); and

(E) Preauthorization.

(2) The Web page shall contain the date on which it was last updated and an email address or other contact information to which a user may report problems or inaccuracies.

(3) The insurance carrier shall update the Web page content within five business days after any such change is made. In addition, the insurance carrier shall provide to the commission, through its Austin representative in the form and manner prescribed by the commission, any new or changed URL for its Web page within five business days after any such change is made.

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

Filed with the Office of the Secretary of State on March 24, 2003.

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Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 804-4287

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CHAPTER 126. GENERAL PROVISIONS APPLICABLE TO ALL BENEFITS

28 TAC §126.11

The Texas Workers' Compensation Commission (the commission) proposes amendments to §126.11, concerning the Extension of the Date of Maximum Medical Improvement for Spinal Surgery.

Section 408.026 of the Texas Workers' Compensation Act (the Act) was revised by the 77th Texas Legislature, 2001, to delete the spinal surgery second opinion process and establish carrier liability for medical costs related to non-emergency spinal surgery only as provided by §413.014 (relating to Preauthorization Requirements; Concurrent Review and Certification of Health Care). Section 413.014 directs that all non-emergency spinal surgery procedures require preauthorization approval prior to surgery, and concurrent review approval for the continuation of treatment beyond previously approved treatment.

The amendments to §126.11 are proposed to replace the rule language that references approval for non-emergency spinal surgery through the spinal surgery second opinion process with the appropriate references to the preauthorization process in §134.600 (relating to Preauthorization Requirements; Concurrent Review and Certification of Health Care).

The language is further amended to delete reference to §134.1001 (relating to the Spine Treatment Guideline), abolished effective January 1, 2002 by House Bill-2600, 77th Texas Legislature.

Proposed subsection (a) replaces language that references the spinal surgery second opinion section of the commission with language that connects an approval for spinal surgery to the preauthorization process. The language of subsection (a) is further revised to reflect the approval notification source as the insurance carrier (carrier) as provided in the preauthorization process, rather than the commission.

Proposed subsection (f)(3) deletes the reference to §134.1001 (the abolished Spine Treatment Guideline).

Proposed subsection (j) replaces the language of "concurrence finding" with "preauthorized approval."

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Judy Bruce, Director of the Medical Review Division, has determined that for the first five-year period the proposed rule amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule. The spinal surgery preauthorization and concurrent review requirements, which were instituted by statute and previous amendments to commission rules, are anticipated to more closely and timely monitor the delivery of medical care to injured employees than the previously mandated second opinion process. The rules changes proposed reflect the completion of the transition from the spinal surgery second opinion process to the preauthorization process.

The Division anticipates savings as a result of deletion of the internal management of the spinal surgery second opinion process now that the transition is complete. The volume of requests to the commission for the resolution of preauthorization and concurrent review disputes regarding the need for spinal surgery, resulting from denials by the insurance carrier (carrier) or their delegated agents has been less than previously anticipated. The Division received fewer than 100 requests for spinal surgery preauthorization medical dispute resolution during calendar year 2002, having minimal impact on the level of internal management of medical disputes within the Division. Local government and state government as covered regulated entities will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Ms. Bruce has also determined that for each year of the first five years the rule amendments as proposed are in effect the public benefits anticipated as a result of enforcing the rule will be the removal of obsolete rule references that could cause confusion to system participants and simplification of the process for the approval of spinal surgery. The statutory and rule language established that on or after the effective date of January 1, 2002, recommendations for spinal surgery would no longer be subject to the spinal surgery second opinion process, but that requests for preauthorization of spinal surgery are required and are submitted to the insurance carrier or the carrier's delegated agent by telephone or facsimile. All TWCC-63 forms submitted prior to January 1, 2002 have been processed in accordance with the statute and rules in effect at the time the form was filed with the commission; no previously submitted recommendations remain open or unprocessed.

This amendment makes no change to the substance of the rule. There will be no anticipated economic costs to persons who are required to comply with the rule as proposed. There will be no costs of compliance for small or large businesses. There will be no adverse economic impact on small businesses or micro-businesses.

Comments on the proposal or requests for public hearing must be received by 5:00 p.m., May 5, 2003. You may comment via the Internet by accessing the commission's website at www.twcc.state.tx.us, clicking on "Laws, Rules & Forms" and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Nell Cheslock, Legal Services, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

The amendment is proposed under the Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; the Texas Labor Code, §402.072, which mandates that only the Commission can impose sanctions which deprive a person of the right to practice before the Commission, receive remuneration in the workers' compensation system, or revoke a license, certification or permit required for practice in the system; the Texas Labor Code, §408.022, which requires an employee receiving treatment under the workers' compensation system to choose a doctor from a list of doctors approved by the Commission and establishes the extent of an employee's option to select an alternate doctor; the Texas Labor Code §408.026, (as amended by HB-2600, 2001 Texas Legislature) that requires the preauthorization of non-emergency spinal surgery; the Texas Labor Code Chapter 410, which provides procedures for the adjudication of disputes; the Texas Labor Code §413.014 (as amended by HB-2600, 2001 Texas Legislature) that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.031, which provides a process for dispute resolution for disputes involving medical services; the Texas Labor Code, §415.034, which allows a party charged with an administrative violation or the Executive Director of

the Commission to request a hearing with the State Office of Administrative Hearings; and the Texas Government Code, §2003.021(c), which requires the State Office of Administrative Hearings to conduct hearings under the Texas Labor Code, Title 5, in accordance with the applicable substantive rules and policies of the Texas Workers' Compensation Commission.

No other code, statute, or article is affected by this rule action.

§126.11. Extension of the Date of Maximum Medical Improvement for Spinal Surgery.

(a) The commission may approve an extension of the date of maximum medical improvement, subject to subsection (f) of this section, if the injured employee has had spinal surgery or has been approved for spinal surgery in accordance with §134.600 of this title (relating to Preauthorization, Concurrent Review, and Voluntary Certification of Health Care), 12 weeks or less before the expiration of 104 weeks from the date income benefits began to accrue. Only one extension of the date of maximum medical improvement pursuant to this section may be granted. Approval for spinal surgery is either the notification from the insurance carrier (carrier) that the spinal surgery has been preauthorized[~~spinal surgery section of the commission~~] or a decision from the appeal process finding the insurance carrier liable for the reasonable costs of spinal surgery. Any extension of the date of maximum medical improvement ordered by the commission must be to a specific and certain date.

(b) Upon application by either the injured employee or the insurance carrier, the commission may by order extend the date of maximum medical improvement past the period of 104 weeks from the date income benefits began to accrue as described in the Texas Labor Code, §401.011(30)(B). The request shall be made in the form and manner prescribed by the commission. The commission shall issue an order approving or denying the request for an extension of the date of maximum medical improvement within ten days of the date the request is received by the commission.

(c) Prior to submission to the commission of a request for an extension of the date of maximum medical improvement, the requestor shall request from the treating doctor or surgeon the information listed in subsection (f) of this section. The request shall also be sent to the injured employee, the injured employee's representative, and the insurance carrier by first class mail on the same day it is submitted to the treating doctor or surgeon. The treating doctor or surgeon shall provide to the injured employee, the injured employee's representative, and the insurance carrier the information requested in subsection (f) of this section within ten days of the date the request is received. If the requesting party has not received the information from the treating doctor or surgeon within 15 days, the request may be submitted to the commission without this information.

(d) After the actions in subsection (c) have been completed, a request for an extension of the date of maximum medical improvement shall be filed at the commission field office managing the claim by personal delivery or first class mail. A request is deemed filed upon receipt at the appropriate field office. In addition, the request shall be sent to the injured employee, the injured employee's representative, and the insurance carrier on the same date it is sent to the commission. If the information from the treating doctor or surgeon is absent when the request is received, commission staff may invoke the provisions of §102.9 of this title (relating to Submission of Information Requested by the Commission) to secure any necessary information.

(e) A request for an extension of the date of maximum medical improvement shall be filed no earlier than 12 weeks before the expiration of 104 weeks after the date income benefits began to accrue. The commission shall deny any request for an extension of the date of maximum medical improvement that is received by the commission prior to 12 weeks before the expiration of 104 weeks after the date income benefits began to accrue or is received on or after the expiration of 110 weeks from the date income benefits began to accrue.

(f) In making the determination to approve or deny a request for an extension of the date of maximum medical improvement, the commission shall consider:

(1) typical recovery times for the specific spinal surgery procedure;

(2) projected date and information regarding when the condition may be medically stable as provided by the treating doctor or the surgeon;

(3) case specific information regarding any extenuating circumstances that may have resulted in variances from conservative treatment protocols and time frames [~~specified in §134.1001 of this title (relating to the Spine Treatment Guideline) or~~] that may impact recovery times as provided by the treating doctor or the surgeon;

(4) information from any source regarding intentional or non-intentional delays in securing the surgery or medical treatment for the compensable injury;

(5) any pending, unresolved disputes regarding the date of maximum medical improvement; and

(6) any pertinent information provided by the insurance carrier, injured employee, and/or the injured employee's representative regarding the extension being requested under this section.

(g) An injured employee or an insurance carrier may dispute the approval, denial, or the length of the extension granted by the commission order by filing a request for a benefit review conference in accordance with §141.1 of this title (relating to Requesting and Setting a Benefit Review Conference) no later than ten days after the date the order is received. Any proceedings and further appeals shall be conducted in accordance with Chapters 140-143 of this title (relating to Dispute Resolution/General Provisions, Benefit Review Conference, Benefit Contested Case Hearing, and Review by the Appeals Panel). Any agreement which resolves a dispute regarding extension of the date of maximum medical improvement in accordance with this section shall be in writing and approved by the commission. Approval shall not be granted if any party rescinds the agreement by notifying the commission within three working days of signing the agreement.

(h) If a request for benefit review conference is not received by the commission within ten days after the date the order granting or denying the extension was received by the disputing party, the parties waive their right to dispute the commission order. In the event that an order is timely disputed, the order shall remain binding pending final resolution of the dispute.

(i) If the injured employee is certified by a doctor to have reached maximum medical improvement between the date the extension order was issued and the extended date of maximum medical improvement specified in the order, any dispute regarding the date of maximum medical improvement shall be resolved through the selection of a designated doctor consistent with the provisions of the Texas Labor Code, §408.122, concerning Eligibility for Impairment Income Benefits; Designated Doctor, and §130.6 of this title (relating to Designated Doctor; General Provisions). If the certification of maximum medical improvement during this time period is not disputed and the date certified is prior to the date of maximum medical improvement specified in the order for the extension, the date of maximum medical improvement from that certification shall apply. If the certification was

timely disputed and the resolution of such a dispute determines that the injured employee reached maximum medical improvement at a date which is different than the date of maximum medical improvement specified in the order for the extension, the earlier date shall apply.

(j) In the event that the extension of the date of maximum medical improvement is granted based on a finding of liability for spinal surgery within the 12 week period and a party appeals the preauthorized approval [~~concurrence~~ ~~finding~~] to a benefit contested case hearing, any extension of the date of maximum medical improvement ordered by the commission shall be conditional pending final decision under the commission's jurisdiction of the liability for spinal surgery. If spinal surgery is not performed within six weeks after the date the final decision of the commission is issued, the order for the extension of the date of maximum medical improvement shall be null and void.

(k) This section applies only to compensable claims with a date of injury on or after January 1, 1998. This section does not apply to an employee who has reached maximum medical improvement prior to requesting an extension under this section. An employee has reached maximum medical improvement in accordance with the Texas Labor Code, §401.011(30)(A), when either a finding of the date of maximum medical improvement is not disputed, or the date of maximum medical improvement has been finally resolved.

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

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301887
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 804-4287

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CHAPTER 133. GENERAL MEDICAL PROVISIONS

The Texas Workers' Compensation Commission (the commission) proposes amendments to §133.2, concerning Sharing Medical Reports and Test Results and the simultaneous repeal of §133.206, concerning Spinal Surgery Second Opinion Process.

Section 408.026 of the Texas Workers' Compensation Act (the Act) was revised by the 77th Texas Legislature, 2001, to delete the spinal surgery second opinion process and establish carrier liability for medical costs related to non-emergency spinal surgery only as provided by §413.014 (relating to Preauthorization Requirements; Concurrent Review and Certification of Health Care). Section 413.014 directs that all non-emergency spinal surgery procedures require preauthorization approval prior to surgery, and concurrent review approval for the continuation of treatment beyond previously approved treatment.

The amendment to §133.2 is proposed to replace the current rule language referencing a doctor performing a second opinion on spinal surgery with language that includes any doctor performing non-emergency surgery. The repeal of §133.206 reflects the statutory deletion of the spinal surgery second opinion process from the workers' compensation system. Section 133.206, amended effective January 1, 2002, is no longer needed and therefore is proposed to be repealed.

The proposed amendment to §133.2(a) adds a "referral doctor" to the list of doctors to whom the treating doctor is required to forward copies of reports, radiographic films, and test results. The proposal further removes language that references a doctor "performing a second opinion on spinal surgery" to reflect the changes in the Act regarding Spinal Surgery approval procedure.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Judy Bruce, Director of the Medical Review Division, has determined that for the first five-year period the proposed rule amendment is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule. The spinal surgery preauthorization and concurrent review requirements, which were instituted by statute and previous amendments to commission rules, are anticipated to more closely and timely monitor the delivery of medical care to injured employees than the previously mandated second opinion process. The rules changes proposed reflect the completion of the transition from the spinal surgery second opinion process to the preauthorization process.

The Division anticipates savings as a result of deletion of the internal management of the spinal surgery second opinion process now that the transition is complete. The volume of requests to the commission for the resolution of preauthorization and concurrent review disputes regarding the need for spinal surgery, resulting from denials by the insurance carrier (carrier) or their delegated agents has been less than previously anticipated. The Division received fewer than 100 requests for spinal surgery preauthorization medical dispute resolution during calendar year 2002, having minimal impact on the level of internal management of medical disputes within the Division. Local government and state government as covered regulated entities will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Ms. Bruce has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be the removal of obsolete rule references that could cause confusion to system participants and simplification of the process for the approval of spinal surgery. The statutory and rule language established that on or after the effective date of January 1, 2002, recommendations for spinal surgery would no longer be subject to the spinal surgery second opinion process, but that requests for preauthorization of spinal surgery are required and are submitted to the insurance carrier or the carrier's delegated agent by telephone or facsimile. All TWCC-63 forms submitted prior to January 1, 2002 have been processed in accordance with the statute and rules in effect at the time the form was filed with the commission; no previously submitted recommendations remain open or unprocessed.

This amendment makes no change to the substance of the rules. There will be no anticipated economic costs to persons who are required to comply with the rules as proposed. There will be no costs of compliance for small or large businesses. There will be no adverse economic impact on small businesses or micro-businesses. Comments on the proposal or requests for public hearing must be received by 5:00 p.m., May 5, 2003. You may comment via the Internet by accessing the commission's website

at www.twcc.state.tx.us, clicking on "Law, Rules & Forms" and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Nell Cheslock at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

SUBCHAPTER A. GENERAL RULE FOR REQUIRED REPORTS

28 TAC §133.2

The amendment is proposed under the Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; the Texas Labor Code, §402.072, which mandates that only the Commission can impose sanctions which deprive a person of the right to practice before the Commission, receive remuneration in the workers' compensation system, or revoke a license, certification or permit required for practice in the system; the Texas Labor Code, §408.022, which requires an employee receiving treatment under the workers' compensation system to choose a doctor from a list of doctors approved by the Commission and establishes the extent of an employee's option to select an alternate doctor; the Texas Labor Code §408.026, (as amended by HB-2600, 2001 Texas Legislature) that requires the preauthorization of non-emergency spinal surgery; the Texas Labor Code Chapter 410, which provides procedures for the adjudication of disputes; the Texas Labor Code §413.014 (as amended by HB-2600, 2001 Texas Legislature) that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.031, which provides a process for dispute resolution for disputes involving medical services; the Texas Labor Code, §415.034, which allows a party charged with an administrative violation or the Executive Director of the Commission to request a hearing with the State Office of Administrative Hearings; and the Texas Government Code, §2003.021(c), which requires the State Office of Administrative Hearings to conduct hearings under the Texas Labor Code, Title 5, in accordance with the applicable substantive rules and policies of the Texas Workers' Compensation Commission.

No other code, statute, or article is affected by this rule action.

§133.2. Sharing Medical Reports and Test Results.

(a) The treating doctor within 10 days of receipt of a written request shall forward to a referral doctor, consulting doctor, designated doctor, [~~a doctor performing a second opinion on spinal surgery,~~] and a doctor that is examining the claimant under a medical examination order, copies of reports required in any rules in this part, radiographic films, and test results, to prevent unnecessary duplication of tests and examinations. An attending emergency doctor or facility will send copies of medical reports and other information to the treating doctor upon request.

(b) When the claimant changes treating doctors, the subsequent treating doctor will contact, in writing, the previous doctor or, if unable to contact the previous doctor, will contact the carrier to obtain copies of all required written medical reports pertinent to the injury and test results submitted to the carrier. The written request will include a signed waiver from the claimant releasing the claimant's medical records to the subsequent treating doctor. The previous doctor will send all information to the subsequent doctor within 10 days of receipt of the written request.

(c) The previous treating doctor shall charge the carrier no more than the fair and reasonable cost as specified in §133.106(f) of this title (relating to Fair and Reasonable Fees for Required Reports and Records) for copies of required reports and test results when the copies are forwarded to the subsequent treating doctor. The carrier shall reimburse the reasonable copying charge for records provided to designated doctors, or a doctor performing a required medical examination.

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

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301889
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 804-4287

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SUBCHAPTER C. SECOND OPINIONS FOR SPINAL SURGERY

28 TAC §133.206

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

This repeal is proposed under the Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; the Texas Labor Code, §402.072, which mandates that only the Commission can impose sanctions which deprive a person of the right to practice before the Commission, receive remuneration in the workers' compensation system, or revoke a license, certification or permit required for practice in the system; the Texas Labor Code, §408.022, which requires an

employee receiving treatment under the workers' compensation system to choose a doctor from a list of doctors approved by the Commission and establishes the extent of an employee's option to select an alternate doctor; the Texas Labor Code §408.026, (as amended by HB-2600, 2001 Texas Legislature) that requires the preauthorization of non-emergency spinal surgery; the Texas Labor Code Chapter 410, which provides procedures for the adjudication of disputes; the Texas Labor Code §413.014 (as amended by HB-2600, 2001 Texas Legislature) that requires the commission to specify by rule, except for treatments and services required to treat a medical emergency, which health care treatments and services require express preauthorization and concurrent review by the carrier as well as allowing health care providers to request precertification and allowing the carriers to enter agreements to pay for treatments and services that do not require preauthorization or concurrent review. This mandate also states the carrier is not liable for the cost of the specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained or ordered by the commission; the Texas Labor Code §413.031, which provides a process for dispute resolution for disputes involving medical services; the Texas Labor Code, §415.034, which allows a party charged with an administrative violation or the Executive Director of the Commission to request a hearing with the State Office of Administrative Hearings; and the Texas Government Code, §2003.021(c), which requires the State Office of Administrative Hearings to conduct hearings under the Texas Labor Code, Title 5, in accordance with the applicable substantive rules and policies of the Texas Workers' Compensation Commission.

No other code, statute, or article is affected by this rule action.

§133.206. Spinal Surgery Second Opinion Process.

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

Filed with the Office of the Secretary of State on March 24, 2003.

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Susan Cory
General Counsel
Texas Workers' Compensation Commission
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For further information, please call: (512) 804-4287

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CHAPTER 165. REJECTED RISK: INJURY PREVENTION SERVICES

28 TAC §165.6

The Texas Workers' Compensation Commission (the commission) proposes an amendment to §165.6, concerning the Follow-up Inspection of Policyholder's Premises by the Division. The amendment is proposed to correct the reference to an article of the Texas Insurance Code.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

During a review of §165.6, it was noted that the reference to the Texas Insurance Code in subsection (a) was incorrect. The rule cites Texas Insurance Code, Article 5.76, Section 10(d) as the article requiring policyholders to obtain a safety consultation. The article cited should be Article 5.76-3, Section 8(c). This proposed amendment will remove the inaccurate reference and replace it with the proper one.

William R. DeCabooter, Director of Workers' Health & Safety, has determined that for the first five-year period the proposed amendment to the rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule as a result of this change. Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Mr. DeCabooter has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be the correction of an incorrect statutory reference that could cause confusion to system participants. This amendment makes no change to the substance of the rule. There will be no anticipated economic costs to persons who are required to comply with the rule as a result of this change. There will be no costs of compliance for small or large businesses as a result of this change. There will be no adverse economic impact on small businesses or micro-businesses.

Comments on the proposal or requests for public hearing must be received by 5:00 p.m., May 5, 2003. You may comment via the Internet by accessing the commission's website at www.twcc.state.tx.us, clicking on "Laws, Rules & Forms" and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Nell Cheslock, Legal Services, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

The amendment is proposed under Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; Texas Labor Code, Chapter 415, which sets out prohibited acts, penalties, and procedures for administrative violations; and Texas Insurance Code, §5.76-3, which authorizes and sets out the provisions for the Texas Mutual Insurance Company.

No other code, statute, or article is affected by this rule action.

§165.6. Follow-up Inspection of the Policyholder's Premises by the Division.

(a) The Texas Workers' Compensation Commission's Division of Workers' Health and Safety (the division) shall conduct a follow-up inspection to ensure compliance with, and effectiveness of, the accident prevention plan developed in response to a safety consultation

required by the Texas Insurance Code, Article 5.76-3, §8(c) [~~Article 5.76, §10(d)~~]. This inspection shall be conducted at the policyholder's premises. The inspection shall be conducted not earlier than 90 days or later than six months after the date the accident prevention plan is submitted to the division.

(b) The inspection shall be conducted and completed during normal work hours.

(c) The policyholder shall allow the division access to the policyholder's premises, including remote job sites, and employees during normal work hours to conduct the follow-up inspection. A policyholder who without good cause refuses to allow the division access to the policyholder's premises may be served with an order of the commission demanding such access. Failure to comply with the commission order will subject the policyholder to penalties and sanctions as provided in the Texas Insurance Code and the Texas Labor Code.

(d) The division may require the presence of the professional source consultant that conducted the hazard survey or assisted with the accident prevention plan development during the follow-up inspection. If the professional source is required during the inspection, the division will coordinate that requirement with the policyholder and the professional source, at the policyholder's expense.

(e) At the time of the inspection, the division may consider as evidence of compliance information which includes, but is not limited to, visual verification, written policies and procedures, attendance rosters for training programs, employee interviews, and purchase orders or receipts for equipment or services necessary to support the accident prevention plan.

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

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301890
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 804-4287

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 113. STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS

SUBCHAPTER C. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES (FCCA §112, 40 CFR 63)

30 TAC §§113.110, 113.120, 113.130, 113.150, 113.170, 113.200, 113.240, 113.250, 113.260, 113.280, 113.320, 113.330, 113.340, 113.350, 113.380, 113.390, 113.400, 113.440, 113.470, 113.490, 113.500, 113.510, 113.520, 113.530, 113.540, 113.550, 113.560, 113.620, 113.640, 113.650, 113.670, 113.690, 113.700, 113.720, 113.730, 113.740, 113.750, 113.780, 113.790, 113.810, 113.840, 113.860, 113.900, 113.910, 113.930, 113.970, 113.1020, 113.1030, 113.1040, 113.1050, 113.1070, 113.1260

The Texas Commission on Environmental Quality (commission) proposes amendments to Subchapter C, concerning National Emission Standards for Hazardous Air Pollutants for Source Categories, §§113.110, 113.120, 113.130, 113.170, 113.200, 113.240, 113.250, 113.260, 113.280, 113.320, 113.330, 113.340, 113.350, 113.380, 113.390, 113.400, 113.470, 113.490, 113.500, 113.510, 113.520, 113.530, 113.540, 113.560, 113.620, 113.640, 113.650, 113.670, 113.690, 113.700, 113.720, 113.730, 113.790, and 113.810. The commission also proposes new §§113.150, 113.440, 113.550, 113.740, 113.750, 113.780, 113.840, 113.860, 113.900, 113.910, 113.930, 113.970, 113.1020, 113.1030, 113.1040, 113.1050, 113.1070, and 113.1260.

The proposed amendments to Chapter 113 incorporate amendments to National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories that the United States Environmental Protection Agency (EPA) has made to Title 40 Code of Federal Regulations Part 63 (40 CFR 63). These are technology-based standards commonly referred to as the maximum achievable control technology (MACT) standards. In addition, the proposed new sections will incorporate by reference 18 MACT standards which have not been previously incorporated into Chapter 113. The EPA is developing these national standards to regulate emissions of hazardous air pollutants under the Federal Clean Air Act (FCAA) Amendments of 1990, §112, as codified in 42 United States Code (USC), §7412.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Under federal law, affected industries are required to implement the MACT standards regardless of whether the commission or EPA is the agency responsible for implementation. As MACT standards are promulgated or amended by EPA, they are reviewed for compatibility with current commission regulations and policies. The commission then incorporates them into Chapter 113 through formal rulemaking procedures. After each MACT standard or amendment is adopted, the commission will seek formal delegation from EPA under 40 CFR 63, Subpart E, which implements 42 USC, §7412(1). Upon delegation, the commission will be responsible to administer and enforce the MACT requirements.

The commission proposes to incorporate amendments that EPA has made to 34 of the federal MACT standards previously incorporated into the commission rules by updating the federal promulgation dates and *Federal Register* (FR) citations stated in the commission rules. The 34 standards along with their corresponding Chapter 113 sections and original incorporation date are listed in the following table.

Figure: 30 TAC Preamble-1

The commission also proposes to incorporate by reference, without change, 18 federal MACT standards as listed in the following table.

Figure: 30 TAC Preamble-2

SECTION BY SECTION DISCUSSION

Subchapter C: National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR 63)

Throughout the proposed amendments, the commission is adding the word "Part" after the phrase "Code of Federal Regulations." Similarly, where the acronym "CFR" is used in existing sections, it is expanded to the Code of Federal Regulations. These amendments are proposed so that the rule language will conform to commission and *Texas Register* formatting and style standards. In addition, the commission is proposing to amend the titles of §§113.200, 113.240, 113.350, 113.500, 113.510, 113.520, 113.540, 113.560, and 113.690 to be the same as the titles for the corresponding subparts in 40 CFR 63.

Section 113.110 - Synthetic Organic Chemical Manufacturing Industry (40 CFR 63, Subpart F)

The commission proposes to amend §113.110 by incorporating by reference, without change, all amendments to Subpart F made by the EPA since April 26, 1999. During this time frame, EPA amended Subpart F on May 8, 2000 (65 FR 26491) and January 22, 2001 (66 FR 6922). The May 8, 2000 amendment revised the definition of the term "equipment leak" to add "connectors" to the list of equipment that is subject to the equipment leak provisions. The January 22, 2001 amendment revised the definition of the term "process vent" and added procedures for identifying "process vents" in order to ensure consistent interpretation of the term. EPA also revised several provisions to reflect the terminology used in the revised definition of process vent, and added provisions to allow off-site control of process vent emissions and to establish a new compliance date under certain circumstances.

Section 113.120 - Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 CFR 63, Subpart G)

The commission proposes to amend §113.120 by incorporating by reference, without change, all amendments to Subpart G made by the EPA since April 26, 1999. During this time frame, EPA amended Subpart G on October 17, 2000 (65 FR 61744); December 14, 2000 (65 FR 78268); and January 22, 2001 (66 FR 6922). The October 17, 2000 amendments included test method version D2879-96 in the definition of the term "maximum true vapor pressure." The December 14, 2000 amendments consolidated portions of the subpart which are applicable to storage vessels, process vents, transfer operations, and equipment leaks within the synthetic organic chemical manufacturing industry (SOCMI). The amendments allow a source the option of complying with a single consolidated rule at 40 CFR Part 65, concerning Consolidated Federal Air Rule (CAR). The CAR is an optional compliance alternative for SOCMI sources. The commission adopted the federal CAR into Chapter 113, Subchapter E, on September 25, 2002 with an effective date of October 20, 2002. As discussed in the previous paragraph, Subpart G was also amended along with Subpart F on January 22, 2001.

Section 113.130 - Organic Hazardous Air Pollutants for Equipment Leaks (40 CFR 63, Subpart H)

The commission proposes to amend §113.130 by incorporating by reference, without change, all amendments to H made by the EPA since April 26, 1999. During this time frame, EPA amended Subpart H on December 14, 2000 (65 FR 78268) and January 22, 2001 (66 FR 6922). The December 14, 2000 amendment allows sources affected by this subpart the alternative compliance option of complying with the CAR. As discussed previously, Subpart H was also amended along with Subparts F and G on January 22, 2001.

Section 113.150 - Polyvinyl Chloride and Copolymers Production (40 CFR 63, Subpart J)

The commission proposes new §113.150, which will incorporate by reference, without change, the Subpart J rules adopted by the EPA on July 10, 2002 (67 FR 45886). This new MACT standard requires that existing polyvinyl chloride (PVC) and copolymer production facilities, which already must comply with the existing vinyl chloride NESHAP found in 40 CFR Part 61, Subpart F, to continue to comply with that existing NESHAP. This rule reflects EPA's determination that, except for equipment leaks at new sources, the hazardous air pollutant (HAP) control level for the PVC and copolymers production source category resulting from compliance with the existing vinyl chloride NESHAP already reflects the application of MACT and thus meets the requirements of 42 USC, §7412(d). For equipment leaks, new sources must comply with the most current technology standards in the generic MACT rules found in 40 CFR 63, Subpart YY. Compliance with the existing vinyl chloride NESHAP promotes regulatory consistency and eliminates the costs that would be incurred by enforcing a new set of standards that likely would result in no additional HAP emissions reductions.

Section 113.170 - Coke Oven Batteries (40 CFR 63, Subpart L)

The commission proposes to amend §113.170 by incorporating by reference, without change, all amendments to Subpart L made by the EPA since October 27, 1993. During this time frame, EPA amended Subpart L on January 13, 1994 (59 FR 1992) and October 17, 2000 (65 FR 61744). The January 13, 1994 amendment included minor corrections to Appendix A of Subpart L. On October 17, 2000, EPA amended 40 CFR §63.301 and §63.304 by adding English units in addition to the metric units.

Section 113.200 - Ethylene Oxide Emissions Standards for Sterilization Facilities (40 CFR 63, Subpart O)

The commission proposes to amend §113.200 by incorporating by reference, without change, all amendments to Subpart O made by the EPA since December 14, 1999. During this time frame, Subpart O was amended on November 2, 2001 (66 FR 55577) to eliminate MACT requirements for chamber exhaust vents. This action reduced safety problems associated with the previous requirements, and also revised testing and monitoring requirements for sterilization chamber, aeration, and chamber exhaust vents to correct technical problems associated with the previous requirements.

Section 113.240 - Pulp and Paper Industry (40 CFR 63, Subpart S)

The commission proposes to amend §113.240 by incorporating by reference, without change, all amendments to Subpart S made by the EPA since April 12, 1999. During this time frame, EPA amended Subpart S on December 22, 2000 (65 FR 80755) and May 14, 2001 (66 FR 24268). The December 22, 2000 amendments revised the pulping process vent standards, the biological treatment system standards, monitoring requirements, and test methods and procedures to address technical issues identified after promulgation of the subpart in 1998. The amendment also specified that downtime, due to routine maintenance of pulping process vent control devices, is included in the excess emissions allowances. The May 14, 2001 amendments corrected two incorrectly referenced subparagraphs and made additional technical corrections.

Section 113.250 - Halogenated Solvent Cleaning (40 CFR 63, Subpart T)

The commission proposes to amend §113.250 by incorporating by reference, without change, all amendments to Subpart T made by the EPA since December 14, 1999. During this time frame, EPA amended Subpart T on September 8, 2000 (65 FR 54419) to provide corrections and clarifications to EPA amendments made on December 3, 1999, and finalized compliance options for continuous web cleaning. The intent of these amendments was to ensure that all owners or operators of solvent cleaning machines have appropriate and understandable requirements for their cleaning machines.

Section 113.260 - Group I Polymers and Resins (40 CFR 63, Subpart U)

The commission proposes to amend §113.260 by incorporating by reference, without change, all amendments to Subpart U made by the EPA since June 30, 1999. During this time frame, EPA amended Subpart U on June 19, 2000 (65 FR 38030) and July 16, 2001 (66 FR 36924). The June 19, 2000 amendments addressed numerous technical issues and concerns with the rules raised by petitioners to the United States Court of Appeals (U.S. Court of Appeals) for the District of Columbia Circuit, *Union Carbide Corp. v. EPA, 96-413 and Consolidated Cases (D.C. Cir.)*. Also the amendments were needed to update the rules as necessitated by the January 17, 1997 amendments to 40 CFR 63, Subparts F - I. The July 16, 2001 amendments corrected minor cross referencing and typographical errors.

Section 113.280 - Epoxy Resins Production and Non-Nylon Polyamides Production (40 CFR 63, Subpart W)

The commission proposes to amend §113.280 by incorporating by reference, without change, all amendments to Subpart W made by the EPA since March 8, 1995. During this time frame, Subpart W was amended on May 8, 2000 (65 FR 26491) to revise the definition of the term "equipment leak" by adding "connectors" to the list of equipment that is subject to the equipment leak provisions.

Section 113.320 - Phosphoric Acid Manufacturing Plants (40 CFR 63, Subpart AA); and

Section 113.330 - Phosphate Fertilizers Production Plants (40 CFR 63, Subpart BB)

The commission proposes to amend §113.320 and §113.330 by incorporating by reference, without change, all amendments to Subparts AA and BB made by the EPA since June 10, 1999. During this time frame, Subparts AA and BB were amended on December 17, 2001 (66 FR 65072); June 12, 2002 (67 FR 40578); and June 13, 2002 (67 FR 40814). The December 17, 2000 amendment revised the applicability and monitoring requirements for both subparts; and corrected typographical errors in Subpart AA; changed the emissions limit for phosphate rock calciners; clarified certain monitoring requirements; and specified applicability of certain parts of the general provisions. However, due to adverse comments received during the public comment period, on June 12, 2002, EPA withdrew direct final rule amendment to Subpart AA concerning emissions limit for phosphate rock calciners. The June 13, 2002 amendment revised the operating requirements for both subparts, and changed the emissions limit for phosphate rock calciners in Subpart AA.

Section 113.340 - Petroleum Refineries (40 CFR 63, Subpart CC)

The commission proposes to amend §113.340 by incorporating by reference, without change, all amendments to Subpart CC made by the EPA since August 18, 1998. During this time frame, EPA amended Subpart CC on May 25, 2001 (66 FR 28840). The May 25, 2001 amendment corrected an error in the amendatory instructions in an earlier correcting amendment, in which 40 CFR §63.640(b)(1) and (2) were inadvertently removed from Subpart CC.

Section 113.350 - Off-Site Waste and Recovery Operations (40 CFR 63, Subpart DD)

The commission proposes to amend §113.350 by incorporating by reference, without change, all amendments to Subpart DD made by the EPA since July 20, 1999. During this time frame, Subpart DD was amended on January 8, 2001 (66 FR 1263). This amendment corrected numerous typographical and cross-reference errors; removed a plus or minus 1% accuracy requirement and replaced it with a reference to 40 CFR Part 60, Appendix B, Performance Specification 8 or 9; and added an additional option to the carbon canister monitoring and replacement requirements so that the requirements would be consistent with other NESHAP and Resource Conservation and Recovery Act (RCRA) air rules.

Section 113.380 - Aerospace Manufacturing and Rework Facilities (40 CFR 63, Subpart GG)

The commission proposes to amend §113.380 by incorporating by reference, without change, all amendments to Subpart GG made by the EPA from September 1, 1998 through December 8, 2000. During this time frame, EPA amended Subpart GG on October 17, 2000 (65 FR 61744) and December 8, 2000 (65 FR 76941). The October 17, 2000 amendment added the American Society for Testing and Materials (ASTM) test method "E 260-96" to 40 CFR §63.750(b)(2). The December 8, 2000 amendment revised the standards to include a separate emission limit for exterior primers used for large commercial aircraft at existing facilities that produce fully assembled, large commercial aircraft.

Section 113.390 - Oil and Natural Gas Production Facilities (40 CFR 63, Subpart HH)

The commission proposes to amend §113.390 by incorporating by reference, without change, all amendments to Subpart HH made by the EPA since June 17, 1999. During this time frame, Subpart HH was amended on June 29, 2001 (66 FR 34548) to correct errors and to clarify the intent of the standard.

Section 113.400 - Shipbuilding and Ship Repair (Surface Coating) (40 CFR 63, Subpart II)

The commission proposes to amend §113.400 by incorporating by reference, without change, all amendments to Subpart II made by the EPA since December 17, 1996. During this time frame, Subpart II was amended on October 17, 2000 (65 FR 61744) to add references to later versions of ASTM test methods.

Section 113.440 - Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 CFR 63, Subpart MM)

The commission proposes new §113.440, which will incorporate by reference, without change, the final rules and all amendments to Subpart MM made by the EPA since January 12, 2001. The standard applies to process components at new and existing sources used in chemical recovery processes at kraft, soda, sulfite, and stand-alone semichemical pulp mills. EPA issued the

final rules for Subpart MM on January 12, 2001 (66 FR 3180). Since Subpart MM was initially issued, EPA amended the rules on July 19, 2001 (66 FR 37591) to make technical corrections and on August 6, 2001 (66 FR 41086) to correct a typographical error. HAPs that are regulated by this MACT standard include gaseous organic HAPs and HAP metals.

Section 113.470 - Containers (40 CFR 63, Subpart PP)

The commission proposes to amend §113.470 by incorporating by reference, without change, all amendments to Subpart PP made by the EPA since July 20, 1999. During this time frame, Subpart PP was amended on January 8, 2001 (66 FR 1263) to correct a cross-reference error.

Section 113.490 - Individual Drain Systems (40 CFR 63, Subpart RR)

The commission proposes to amend §113.490 by incorporating by reference, without change, all amendments to Subpart RR made by the EPA since July 20, 1999. During this time frame, Subpart RR was amended on January 8, 2001 (66 FR 1263) to correct typographical errors.

Section 113.500 - Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process (40 CFR 63, Subpart SS);

Section 113.510 - Equipment Leaks - Control Level 1 (40 CFR Part 63, Subpart TT);

Section 113.520 - Equipment Leaks - Control Level 2 (40 CFR 63, Subpart UU); and

Section 113.540 - Storage Vessels (Tanks) - Control Level 2 (40 CFR 63, Subpart WW)

The commission proposes to amend §§113.500, 113.510, 113.520, and 113.540 by incorporating by reference, without change, all amendments to Subparts SS - UU and WW made by the EPA since November 22, 1999. During this time frame, Subparts SS - UU and WW were amended on July 12, 2002 (67 FR 46258) as part of an amendment to 40 CFR 63, Subpart YY. The Subpart YY amendment added four processes (cyanide chemicals manufacturing, carbon black production, ethylene production, and spandex production) to the generic MACT standard and incorporated generic requirements established for similar emissions sources that are also applicable to the four processes. The amendments specified the appropriate methods for demonstrating compliance with percent reduction requirements and emission concentration limits for the four processes in Subparts SS - UU and WW and specified who has the authority to implement and enforce the subparts. The amendments also specified that the authorities may be delegated to a state, local, or tribal agency.

Section 113.530 - Oil-Water Separators and Organic-Water Separators (40 CFR 63, Subpart VV)

The commission proposes to amend §113.530 by incorporating by reference, without change, all amendments to Subpart VV made by the EPA since July 20, 1999. During this time frame, Subpart VV was amended on January 8, 2001 (66 FR 1263) to correct a typographical error.

Section 113.550 - Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (40 CFR 63, Subpart XX)

The commission proposes new §113.550, which will incorporate by reference, without change, the final rules to Subpart XX adopted by the EPA on July 12, 2002 (67 FR 46258). This MACT standard applies to heat exchange systems and wastewater operations at ethylene manufacturing facilities. The primary HAPs that will be controlled include benzene; 1,3-butadiene; cumene; ethyl benzene; hexane; naphthalene; styrene; toluene; o-xylene, m-xylene, and p-xylene.

Section 113.560 - Generic Maximum Achievable Control Technology Standards (40 CFR 63, Subpart YY)

The commission proposes to amend §113.560 by incorporating by reference, without change, all amendments to Subpart YY made by the EPA since November 22, 1999. During this time frame, Subpart YY was amended on December 22, 1999 (64 FR 71852); November 2, 2001 (66 FR 55844); June 7, 2002 (67 FR 39301); twice on July 12, 2002 (67 FR 46258 and 46289); and February 10, 2003 (68 FR 6635). The December 22, 1999 amendment was a correction to 40 CFR §63.1103(d), Table 5, to insert a number that was missing. The November 2, 2001 amendment concerned the regulation of surge control vessels and bottoms receiver vessels. The June 7, 2002 amendment addressed a petitioner's questions regarding a recordkeeping provision in the promulgated rules; the definition for "process vent"; and editorial, cross-reference, and wording errors. The July 12, 2002 amendment established standards for cyanide chemicals manufacturing, carbon black production, ethylene production, and spandex production source categories. These four source categories were added to the generic MACT standards to reduce the regulatory burden associated with the development of separate rulemakings, to simplify the rulemaking process, to minimize the potential for duplicative or conflicting requirements, to conserve limited resources, and to ensure consistency of the air emissions requirements applied to similar emission points. EPA also issued an amendment on July 12, 2002, which clarified the EPA intent concerning dry spinning spandex production processes by concluding that the MACT floor for spandex dry spinning facilities is "no control" and that adoption of additional emission controls is not warranted. Therefore, EPA determined that it was not necessary or appropriate to promulgate any MACT requirements for spandex dry spinning facilities, but controls on spandex reaction spinning facilities were still necessary. The February 10, 2003 amendment added a definition for "process wastewater" to Subpart YY.

Section 113.620 - Hazardous Waste Combustors (40 CFR 63, Subpart EEE)

The commission proposes to amend §113.620 by incorporating by reference, without change, all amendments to Subpart EEE made by the EPA since November 19, 1999. During this time frame, EPA amended Subpart EEE on July 10, 2000 (65 FR 422920); November 9, 2000 (65 FR 67268); May 14, 2001 (66 FR 24270); July 3, 2001 (66 FR 35087); October 15, 2001 (66 FR 523610); December 6, 2001 (66 FR 63313); February 13, 2002 (67 FR 6792); February 14, 2002 (67 FR 6968); and December 19, 2002 (67 FR 77687).

The July 10, 2000 amendment corrected numerous typographical errors and clarified several issues from the September 30, 1999 promulgated rules; clarified one issue from a closely related June 19, 1998 amendment; and made one revision to the November 19, 1999 technical correction.

The November 9, 2000 amendment was an interpretative clarification and a technical correction. Part one of the amendment

addressed several questions from sources concerning the applicability of new source standards versus existing source standards for hazardous waste incinerators by specifying the original intent of the rules on these issues. The second part of the amendment made three technical corrections which addressed performance testing, the continuous monitoring system evaluation plans, and continuous monitoring system data averaging.

The May 14, 2001 amendment was based on a court decision, *Chemical Manufacturers Association v. EPA*, 217 F. 3d 861 (D.C. Cir. 2000), in which the court vacated the Notice of Intent to Comply provisions of EPA's rules relating to the standards for hazardous waste combustors. EPA also filed a motion with the Washington D.C. Circuit to vacate certain parameter limits of baghouses and electrostatic precipitators in order to allow additional opportunity for notice and comment on the issue (*CKRC v. EPA*, no 99-1457, EPA Motion to November 14, 2000).

The July 3, 2001 amendment improved the implementation of the emission standards associated with the final rule promulgated on September 30, 1999 (64 FR 52,828), primarily in the areas of compliance, testing, and monitoring requirements. However, due to adverse comments received during the public comment period, on October 15, 2001, EPA withdrew portions of three sections, including the proposed new definition of the phrase "preheater tower combustion gas monitoring location" from the direct final rules published on July 3, 2001.

The December 6, 2001 amendment extended the compliance date for Subpart EEE for one year. This amendment was in response to the Washington D.C. Circuit 2001 opinion on *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855, 872 issued July 24, 2001. The February 13, 2002 amendment revised the September 1999 emission standards with the issuance of an Interim Standards Rule which, while less stringent than the original rules, achieves most of the emission gains of the original rules. The interim standards replaced the vacated standards temporarily, until final standards could be promulgated. The February 14, 2002 amendments focused on improving the implementation of the emissions standards, primarily in the areas of compliance, testing, and monitoring.

Finally, the December 19, 2002 amendments made the following technical corrections: 1) sources that comply early are not required to submit the notice of compliance within 90 days of completing the comprehensive performance test; 2) the hydrochloric acid and chlorine gas emission standard for new lightweight aggregate kilns was changed to 600 parts per million by volume; 3) the minimum power requirement for ionizing wet scrubbers was deleted; 4) the requirement to include a carbon bed testing schedule in the performance test plan was deleted; 5) combustion system leak requirements were added; 6) the compliance date extension requirements were changed; 7) the RCRA permitting requirements were changed; 8) the limit on waste feed-rate for compliance with the dioxin/furan emissions standard was changed; 9) the limit on the maximum ash feed-rate for incinerators was changed; and 10) and the sampling and analysis requirements were changed.

Section 113.640 - Pharmaceuticals Production (40 CFR 63, Subpart GGG)

The commission proposes to amend §113.640 by incorporating by reference, without change, all amendments to Subpart GGG made by the EPA since September 21, 1998. During this time frame, EPA amended Subpart GGG on August 29, 2000 (65 FR 52588); August 2, 2001 (66 FR 401210); and April 2, 2002 (67 FR 15486). The August 29, 2000 amendment addressed 12 technical issues and concerns raised by petitioners in the U.S. Court of Appeals for the District of Columbia Circuit, *PhRMA v. EPA, 98-1551 (D.C. Cir.)*. The August 2, 2001 amendment provided additional compliance options for process vent and storage tank emissions, specified additional methods that may be used to analyze wastewater, shifted one compound from the list of partially soluble HAPs to the list of soluble HAPs, eliminated an unintended restriction on the use of enhanced biological treatment, allowed a sewer line between drains and the first downstream junction box to be vented, clarified how to assign storage tanks that are shared among pharmaceutical manufacturing process units and other types of process units, clarified monitoring frequency requirements for connectors, clarified and simplified recordkeeping and reporting requirements, eliminated inconsistencies, and corrected several referencing and typesetting errors. The April 2, 2002 amendment corrected a reference to 40 CFR §63.1257(d)(3)(iii) and removed an incorrect definition of the term " " in the calculation of the mass flow rate in wastewater stream entering combustion treatment processes.

Section 113.650 - Natural Gas Transmission and Storage Facilities (40 CFR 63, Subpart HHH)

The commission proposes to amend §113.650 by incorporating by reference, without change, all amendments to Subpart HHH made by the EPA since June 17, 1999. During this time frame, EPA amended Subpart HHH on June 29, 2001 (66 FR 34548); September 27, 2001 (66 FR 49299); and February 22, 2002 (67 FR 8202). The June 29, 2001 amendment corrected errors and restated the intent of the standard. The September 27, 2001 and February 22, 2002 amendments made technical corrections to the June 29, 2001 amendment.

Section 113.670 - Group IV Polymers and Resins (40 CFR 63, Subpart JJJ)

The commission proposes to amend §113.670 by incorporating by reference, without change, all amendments to Subpart JJJ made by the EPA since June 30, 1999. During this time frame, EPA amended Subpart JJJ on June 19, 2000 (65 FR 38030); August 29, 2000 (65 FR 52319); October 26, 2000 (65 FR 64161); February 23, 2001 (66 FR 11233); February 26, 2001 (66 FR 11543); July 16, 2001 (66 FR 36924); and August 6, 2001 (66 FR 40903).

The June 19, 2000 amendment addressed numerous technical issues and concerns with the rules raised by petitioners to the U.S. Court of Appeals for the District of Columbia Circuit, *Union Carbide Corp. v. EPA, 96-413 and Consolidated Cases (D.C. Cir.)*. In addition, the amendments updated Subpart JJJ as necessitated by amendments to the hazardous organic NESHAP in Subparts F - I.

The August 29, 2000 amendment was a direct final rule that indefinitely stayed the compliance date for the process contact cooling tower provisions for existing affected sources producing polyethylene terephthalate (PET) using the continuous terephthalic acid high viscosity multiple end finisher process. However, due to adverse comments, on October 26, 2000, EPA withdrew the August 29, 2000 direct final rule. The February 23, 2001 was another direct final rule that indefinitely stayed the February 27, 2001 compliance date for the process contact cooling tower provisions for existing affected sources producing poly using the continuous terephthalic acid high viscosity multiple end finisher process.

The February 26, 2001 amendment extended certain compliance dates contained in the subpart concerning the equipment leaks provisions as applied to PET affected sources and corrected a reference error. The July 16, 2001 amendment corrected minor cross-referencing and typographical errors, and made minor clarifications.

The EPA was petitioned to reconsider the equipment leak detection and repair standards contained in this subpart as they pertained to PET facilities. The August 6, 2001 amendment denied the petition and retained the equipment leak provisions of the promulgated rules, except for a modification of the definition of a leak for certain ethylene glycol pumps. In addition, the amendment extended the equipment leak provisions compliance date for PET affected sources to August 6, 2002, in order to provide PET facilities time to develop a leak detection and repair program.

Section 113.690 - Portland Cement Manufacturing Industry (40 CFR 63, Subpart LLL)

The commission proposes to amend §113.690 by incorporating by reference, without change, all amendments to Subpart LLL made by the EPA since June 14, 1999. During this time frame, EPA amended Subpart LLL on April 5, 2002 (67 FR 16614); July 2, 2002 (67 FR 44371); July 5, 2002 (67 FR 44766); and December 6, 2002 (67 FR 72580).

The April 5, 2002 direct final rule amendments improved the implementation of the emission standards, primarily in the areas of applicability, testing, and monitoring, to resolve issues and questions raised since promulgation of the rule. However, due to adverse comments received during the public comment period concerning the April 5, 2002 amendments, EPA withdrew portions of the amendments to three sections on July 2, 2002.

The July 5, 2002 amendments corrected errors to Table 1 concerning monitoring requirements. The amendments also addressed two issues which arose from the explanatory language in the preamble to the April 5, 2002 direct final rule amendments. First, the amendments specified that the production rate is not a parameter for which operating limits are established and that the production rate measured during dioxin/furan or particulate matter performance testing is not an operation limit for the source. Furthermore, the amendments specified that a source would need to reconduct a performance test if the current operation is not representative of the operation during the previous performance test, such that the change in operation may adversely affect compliance. Finally, the amendments specified that only the transfer points used to convey coal from mill to the kiln are potential affected sources under Subpart LLL.

The December 6, 2002 amendments improved the implementation of the emission standards, primarily in the areas of applicability, testing, and monitoring, to resolve issues and questions raised since promulgation of the rule. Specifically, the amendments addressed the issues raised as a result from adverse comment to the April 5, 2002 amendments that were withdrawn on July 2, 2002.

Section 113.700 - Pesticide Active Ingredient Production (40 CFR 63, Subpart MMM)

The commission proposes to amend §113.700 by incorporating by reference, without change, all amendments to Subpart MMM made by the EPA since June 23, 1999. During this time frame, EPA amended Subpart MMM twice on November 21, 2001 (66 FR 58393 and 58396); twice on March 22, 2002 (67 FR 13508 and 13514); June 3, 2002 (67 FR 38200); and September 20, 2002 (67 FR 59336). The November 21, 2001 amendments changed the requirements for pre-compliance plans to three months in advance of the compliance date instead of six months. Due to issues raised by petitioners in the U.S. Court of Appeals for the District of Columbia Circuit, the amendments also revised the definition of the term "process tank," *American Coke and Coal Chemicals Institute v. EPA, No. 99-1339 (D.C. Cir.)*.

The second of two March 22, 2002 amendments, in a Good Cause Final Rule, provided an interim compliance date extension for existing sources from June 23, 2002 to August 22, 2002 pending resolution of a settlement agreement. The interim compliance date extension was necessary because EPA simultaneously published a March 22, 2002 direct final amendment to extend the compliance deadline until December 23, 2003, but the comment period extended past the existing March 23, 2002 pre-compliance plan deadline. The June 3, 2002 amendments officially extended the compliance date until December 23, 2003.

The September 20, 2002 amendments addressed the issues raised by petitioners (American Crop Protection Association and American Cyanamid Company (now BASF Corporation) U.S. Court of Appeals for the District of Columbia Circuit, ACPA v. EPA, No. 9901334 (Consolidated with ACPA v. EPA, No 99-1332)), to ensure that the rule was implemented as intended, to correct errors, and to maintain consistency with other rules.

Section 113.720 - Manufacture of Amino/Phenolic Resins (40 CFR 63, Subpart OOO)

The commission proposes to amend §113.720 by incorporating by reference, without change, all amendments to Subpart OOO made by the EPA since January 20, 2000. During this time frame, Subpart OOO was amended on February 22, 2000 (65 FR 8768) to correct typographical errors and an equation.

Section 113.730 - Polyether Polyols Production (40 CFR 63, Subpart PPP)

The commission proposes to amend §113.730 by incorporating by reference, without change, all amendments to Subpart PPP made by the EPA since June 1, 1999. During this time frame, Subpart PPP was amended on June 14, 1999 (64 FR 31895) and May 8, 2000 (65 FR 26491). The June 14, 1999 amendment was a correction to an equation. The May 8, 2000 amendment revised the definition of the term "equipment leak" by adding "connectors" to the list of equipment that is subject to the equipment leak provisions; corrected errors in several equations; corrected numerous cross- referencing errors; incorporated definitions by reference; removed references to 40 CFR 63, Subpart I; and made revisions concerning the applicability, performance testing, reports, and initial notifications.

Section 113.740 - Primary Copper Smelting (40 CFR 63, Subpart QQQ)

The commission proposes new §113.740, which will incorporate by reference, without change, the final rules to Subpart QQQ adopted by the EPA on June 12, 2002 (67 FR 40478). This new MACT standard establishes emissions limitations and work practice standards for primary copper smelters that are, or are part of, a major source of HAP emissions and that use batch copper converters. The primary toxic metal HAPs that will be controlled include antimony, arsenic, beryllium, cadmium, cobalt, lead, manganese, nickel, and selenium.

Section 113.750. Secondary Aluminum Production (40 CFR 63, Subpart RRR).

The commission proposes new §113.750, which will incorporate by reference, without change, the final rules for Subpart RRR adopted by the EPA on March 23, 2000 (65 FR 15690) and amended on June 14, 2002 (67 FR 41118); August 13, 2002 (67 FR 52616); September 24, 2002 (67 FR 59787); November 8, 2002 (67 FR 68038); and December 30, 2002 (67 FR 79808). On March 23, 2000, EPA promulgated standards for new and existing sources at secondary aluminum production facilities. HAPs emitted by the affected facilities include organic HAPs (including dioxins and furans), inorganic gaseous HAPs (hydrogen chloride, hydrogen fluoride, and chlorine), and particulate metal HAPs. Emissions of other pollutants include particulate matter and volatile organic compounds. Secondary aluminum production facilities that are area sources are only subject to limitations on emissions of dioxins and furans only.

As part of a settlement agreement with industry trade associations, the June 14, 2002 amendments were published as direct final rules and clarified compliance dates and deferred certain early compliance obligations. The compliance date for a newly affected source (which is constructed or reconstructed at an existing aluminum die casting facility, aluminum foundry, or aluminum extrusion facility and that is subject to the rule) was deferred until March 24, 2003 or upon startup, whichever is later. The amendment also specified that the operation, maintenance, and monitoring plan must be submitted no later than the compliance date for existing sources, and 90 days after the initial performance test for new sources. The amendments also required the owner or operator to prepare a site-specific plan that meets the requirements of 40 CFR 63, Subpart A, to obtain approval of the plan, and conduct any performance test no later that the compliance date for existing sources and within 90 days after the compliance date stated in rule for new sources. The requirement for notification of compliance status was revised to correspond to the new dates specified in the amendments. The August 13, 2002 amendments withdrew the entire June 14, 2002 direct final rule due to adverse comments on several of the provisions in the direct final rule. Along with the direct final rules, EPA proposed a parallel rule amendments on June 14, 2002, and adopted all of the amendments as proposed on September 24, 2002.

The November 8, 2002 amendments corrected an error in the effective date listed in the September 24, 2002 notice, changing the effective date from November 25, 2002 to September 24, 2002.

The December 30, 2002 amendments revised the applicability provisions for aluminum die casters, foundries, and extruders. The amendments also added new provisions governing control of commonly ducted units; revised the procedures for adoption of operation, maintenance, and monitoring plans; revised the criteria concerning testing of representative emissions units; revised the standard for unvented in-line flux boxes; and clarified the control requirements for sidewall furnaces.

Section 113.780 - Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 CFR 63, Subpart UUU)

The commission proposes new §113.780, which will incorporate by reference, without change, the final promulgated rules in Subpart UUU adopted by the EPA on April 11, 2002 (67 FR 17762). This MACT standard affects sources at petroleum refineries which include catalytic cracking units, catalytic reforming units, and sulfur recovery units, as well as associated by-pass lines. HAPs that are to be reduced by this final rule include organics (acetaldehyde, benzene, formaldehyde, hexane, phenol, toluene, and xylene); reduced sulfur compounds (carbonyl sulfide and carbon disulfide); inorganics (hydrogen chloride and chlorine); and particulate metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, and nickel).

Section 113.790 - Publicly Owned Treatment Works (40 CFR 63, Subpart VVV)

The commission proposes to amend §113.790 by incorporating by reference, without change, all amendments to Subpart VVV made by the EPA since October 26, 1999. During this time frame, Subpart VVV was amended on March 23, 2001 (66 FR 16140) and October 21, 2002 (67 FR 64742). The March amendments corrected grammatical, typographic, formatting, and cross-reference errors. Following this notice, the Pharmaceutical Research and Manufacturers of America filed a petition for judicial review. As part of the settlement agreement, the October 21, 2002 amendments rescinded the applicability provision specified in 40 CFR §63.1580(c); applied the same NESHAP requirements that apply to industrial publicly owned treatment works (POTW) treatment plants that are major HAP sources to all industrial POTW treatment plants that are area HAP sources; and exempted industrial POTW treatment plants that are area HAP sources from the permit requirements in 42 USC, §7661a(a).

Section 113.810 - Ferroalloys Production: Ferromanganese and Silicomanganese (40 CFR 63, Subpart XXX)

The commission proposes to amend §113.810 by incorporating by reference, without change, all amendments to Subpart XXX made by the EPA since May 20, 1999. During this time frame, Subpart XXX was amended on March 22, 2001 (66 FR 16007) and established new emission limitations for ferromanganese and silicomanganese production in open submerged arc furnaces. The amendments established four subcategories within the category of furnaces and specified numerical emission limitations for particulate matter for each, to account for differences in emission potential and control, furnace size, operating conditions, and alloy type.

Section 113.840 - Municipal Solid Waste Landfills (40 CFR 63, Subpart AAAA)

The commission proposes new §113.840, which will incorporate by reference, without change, the final promulgated rules in Supbart AAAA adopted by the EPA on January 16, 2003 (68 FR 2227). This new MACT standard applies to new and existing municipal solid waste landfills that are major or area sources of emissions. The HAP emissions from these landfills include, but are not limited to, benzene, ethyl benzene, toluene, and vinyl chloride.

Section 113.860 - Manufacturing of Nutritional Yeast (40 CFR 63, Subpart CCCC)

The commission proposes new §113.860, which will incorporate by reference, without change, the final promulgated rules in Subpart CCCC adopted by the EPA on May 21, 2001 (66 FR 27876). This new MACT standard applies to process components at new and existing major sources which are in the nutritional yeast manufacturing source category. The EPA identified this source category as a major source of HAP emissions of acetaldehyde.

Section 113.900 - Solvent Extraction for Vegetable Oil Production (40 CFR 63, Subpart GGGG)

The commission proposes new §113.900, which will incorporate by reference, without change, the final promulgated rules and all amendments to Subpart GGGG adopted by the EPA since April 12, 2001. The final rule for Subpart GGGG was issued on April 12, 2001 (66 FR 19006) and amended on April 5, 2002 (67 FR 16317). This new MACT standard applies to process components at new and existing major sources at vegetable oil production facilities which use solvent extraction, which includes facilities that produce crude vegetable oil and meal products by removing oil from listed oil seeds through direct contact with an organic solvent. The EPA identified this source category as a major source of HAP emissions of n-hexane.

The April 5, 2002 amendments specified that the startup, shutdown, and maintenance provisions were applicable to vegetable oil production plants and specified the applicability of the NESHAP general provisions in 40 CFR 63, Subpart A.

Section 113.910 - Wet-Formed Fiberglass Mat Production (40 CFR 63, Subpart HHHH)

The commission proposes new §113.910, which will incorporate by reference, without change, the final promulgated rules for Subpart HHHH adopted by the EPA on April 11, 2002 (67 FR 17824). This new MACT standard applies to process components at new and existing major sources which are in the wet-formed fiberglass mat production source category. The primary HAP emissions from these sources are formaldehyde, methanol, and vinyl acetate.

Section 113.930 - Paper and Other Web Coating (40 CFR 63, Subpart JJJJ)

The commission proposes new §113.930, which will incorporate by reference, without change, the final promulgated rules for Subpart JJJJ adopted by the EPA on December 4, 2002 (67 FR 72330). This new MACT standard applies to facilities that coat paper and other web substrates. The final standards are designed to eliminate approximately 80% of nationwide HAP emissions from facilities that coat paper and other web substrates. The EPA identified this source category as a major source of HAP emissions of toluene, methanol, methyl ethyl keytone, xylenes, phenol, methylene chloride, ethylene glycol, glycol ethers, hexane, methyl isobutyl ketone, cresols and cresylic acid, dimethylformamide, vinyl acetate, formaldehyde, and ethyl benzene.

Section 113.970 - Surface Coating of Large Appliances (40 CFR 63, Subpart NNNN)

The commission proposes new §113.970, which will incorporate by reference, without change, the final rules to Subpart NNNN adopted by the EPA on July 23, 2002 (67 FR 48254). This new MACT standard applies to new and existing sources that apply surface coatings to large appliances. The EPA identified this source category as a major source of HAP emissions of glycol ethers, methylene diphenyl diisocyanate, methyl ethyl ketone, toluene, and xylene. These compounds account for over 80% of the nationwide HAP emissions from this source category.

Section 113.1020 - Surface Coating of Metal Coil (40 CFR 63, Subpart SSSS)

The commission proposes new §113.1020, which will incorporate by reference, without change, the final rules and all amendments to Subpart SSSS adopted by the EPA since June 10, 2002. EPA issued the final rule for Subpart SSSS on June 10, 2002 (67 FR 39794) and technical corrections on March 17, 2003 (68 FR 12590). This new MACT standard applies to process components at new and existing sources that coat metal coil products. The primary HAPs that will be controlled include methyl ethyl ketone, glycol ethers, xylenes (isomers and mixtures), toluene, and isophorone. The March 17, 2003 amendments corrected the time line for beginning the first semiannual reporting period and submitting the first semiannual report.

Section 113.1030 - Leather Finishing Operations (40 CFR 63, Subpart TTTT)

The commission proposes new §113.1030, which will incorporate by reference, without change, the final promulgated rules in Subpart TTTT adopted by the EPA on February 27, 2002 (67 FR 9156). This new MACT standard applies to process components at new and existing major sources at leather finishing operations. The EPA has identified these facilities as major sources of emissions of HAPs, such as glycol ethers, toluene, and xylene.

Section 113.1040 - Cellulose Products Manufacturing (40 CFR 63, Subpart UUUU)

The commission proposes new §113.1040, which will incorporate by reference, without change, the final rules in Subpart UUUU adopted by the EPA on June 11, 2002 (67 FR 40044). This new MACT standard applies to process components at cellulose products manufacturing. Cellulose products manufacturing includes both the miscellaneous viscose processes (MVP) source category and the cellulose ethers production (CEP) source category. The MVP source category comprises the cellulose food casing, rayon, cellulosic sponge, and cellophane manufacturing industries. The CEP source category comprises the methyl cellulose, hydroxypropyl methyl cellulose, hydroxypropyl cellulose, hydroxyethyl cellulose, and carboxymethyl cellulose manufacturing industries. The EPA identified the MVP source category and the CEP source category as including major sources of emissions of HAPs, such as carbon disulfide, carbonyl sulfide, ethylene oxide, methanol, methyl chloride, propylene oxide, and toluene.

Section 113.1050 - Boat Manufacturing (40 CFR 63, Subpart VVVV)

The commission proposes new §113.1050, which will incorporate by reference, without change, the final rules and all amendments to Subpart VVVV adopted by the EPA since August 22, 2001. EPA issued the final rule for Subpart VVVV on August 22, 2001 (66 FR 44218) and amendments on October 3, 2001 (66 FR 50504). This new MACT standard applies to process components at new and existing boat manufacturing facilities, which include fiberglass resin and gel coat operations, carpet and fabric adhesive operations, and aluminum recreational boat painting operations. The EPA has identified boat manufacturing as a major source of HAPs, such as styrene, methyl methacrylate, methylene chloride, toluene, xylene, n-hexane, methyl ethyl ketone, methyl isobutyl ketone, and methyl chloroform. The October 3, 2001 amendments corrected typographical errors.

Section 113.1070 - Rubber Tire Manufacturing (40 CFR 63, Subpart XXXX)

The commission proposes new §113.1070, which will incorporate by reference, without change, the final rules and all amendments to Subpart XXXX adopted by the EPA since July 9, 2002. EPA issued the final rule for Subpart XXXX on July 9, 2002 (67 FR 45588) and technical corrections on March 12, 2003 (68 FR 11745). This new MACT standard applies to process components at new and existing rubber tire manufacturing facilities.

The primary HAPs that will be controlled include toluene and hexane. The March 12, 2003 amendments corrected typographical errors and made corrections to wording.

Section 113.1260 - Friction Materials Manufacturing Facilities (40 CFR 63, Subpart QQQQQ)

The commission proposes new §113.1260, which will incorporate by reference, without change, the final rules in Subpart QQQQQ adopted by the EPA on October 18, 2002 (67 FR 64498). This new MACT standard applies to process components at new and existing friction materials manufacturing facilities. The primary HAPs that will be controlled include n-hexane, toluene, and trichloroethylene.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT PROGRAM

Because Chapter 113 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits, owners or operators subject to the Federal Operating Permit Program must, consistent with the amendment process in Chapter 122, revise their operating permit to include the amended Chapter 113 requirements for each emission unit affected by the amendments to Chapter 113 at their site.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state and local government due to administration and enforcement of the proposed rules. The purpose of the proposed rules is to incorporate by reference, MACT standards mandated by the FCAA and the amendments to that act. EPA is developing these national MACT standards to regulate emissions under 42 USC, §7412. The commission will implement and enforce the requirements of each MACT standard upon delegation by the EPA. HAP sources affected by the MACT standards are required to comply with the federal standards whether or not the commission adopts or takes delegation of the standards from EPA. The proposed rules are not anticipated to add additional costs to the regulated community beyond what is already required to comply with the federal standards.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be increased consistency between federal and state air quality regulations and conformance with the requirements of 42 USC, §7412.

There are no additional fiscal implications anticipated to affected owners and operators beyond what is already required to comply with federal MACT standards. The proposed rules affect certain sources of HAPs which will be required to comply with federal MACT standards whether or not the commission adopts or takes delegation of the standards from EPA.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There are no adverse fiscal implications anticipated for small and micro-businesses as a result of implementation and enforcement of the proposed rules beyond what is already required to comply with federal MACT standards. The purpose of the proposed rules is to adopt MACT standards mandated by 42 USC, §7412. Small or micro-businesses that are sources of HAPs are required to comply with federal standards whether or not the commission adopts or takes delegation of the standards from EPA.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is one of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rules is to adopt MACT standards mandated by the FCAA and the amendments to that act. EPA is developing these national MACT standards to regulate emissions of HAPs under 42 USC, §7412. HAP sources affected by the MACT standards are required to comply with the federal standards whether or not the commission adopts or takes delegation of the standards from EPA. The proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond the existing requirements to comply with the federal standards. The proposed rules are intended to protect the environment, but are not anticipated to have material adverse effects beyond what is already required to comply with federal MACT standards on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, §2001.0225 only applies to a "major environmental rule," the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the MACT standards within this proposal are federal technology-based standards which will be adopted by reference, and therefore, will not exceed any standard set by federal law. This proposal is not an express requirement of state law, but was developed by EPA as MACT standards mandated by the FCAA and the amendments to that act. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government. The proposed rules were not developed solely under the general powers of the agency, but are proposed under the Texas Clean Air Act (TCAA), as codified in Texas Health and Safety Code (THSC), §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, which authorizes the commission to prescribe

reasonable requirements for measuring and monitoring the emissions of air contaminants; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to air permits.

TAKINGS IMPACT ASSESSMENT

The commission prepared a preliminary takings impact assessment for this proposal under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to facilitate implementation and enforcement of the MACT standards by the state. This rulemaking will not create any additional burden on private real property. Under federal law, the affected industries will be required to implement these MACT standards regardless of whether the commission or EPA is the agency responsible for implementation of the standards.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as revised (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Coastal Management Program. As required by 31 TAC §505.11(b)(2), relating to rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the proposed action is consistent with the applicable CMP goals and policies. This proposed rulemaking is consistent with the goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and value of coastal natural resource areas. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 CFR to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This proposal will incorporate by reference, 18 new and 34 amended federal MACT subparts contained in 40 CFR 63 and is, therefore, consistent with this policy. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on April 28, 2003 at 10:00 a.m. in Building F, Room 2210 of the commission's central office, located at 12100 Park 35 Circle, Austin, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-036a-113-AI. Comments must be received by 5:00 p.m., May 5, 2003. For further information or questions concerning this proposal, contact Keith Sheedy, Office of Compliance and Enforcement at (512) 239-1556 or Alan Henderson, Office of Environmental Policy, Analysis, and Assessment at (512) 239-1510.

STATUTORY AUTHORITY

The new and amended sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new and amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and §382.051, concerning Permitting Authority of the Commission: Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA.

These proposed new and amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051.

§113.110. Synthetic Organic Chemical Manufacturing Industry (40 CFR 63, Subpart F).

The Synthetic Organic Chemical Manufacturing Industry Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart F, is incorporated by reference as amended through January 22, 2001 (66 FR 6922) [~~April 26, 1999, at 64 FedReg 20189~~].

§113.120. Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 CFR 63, Subpart G).

The Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart G, is incorporated by reference as amended through January 22, 2001 (66 FR 6922) [~~April 26, 1999, at 64 FedReg 20189~~].

§113.130. Organic Hazardous Air Pollutants for Equipment Leaks (40 CFR 63, Subpart H).

The Organic Hazardous Air Pollutants for Equipment Leaks Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart H, is incorporated by reference as amended through January 22, 2001 (66 FR 6922) [~~April 26, 1999, at 64 FedReg 20189~~].

§113.150. Polyvinyl Chloride and Copolymers Production (40 CFR 63, Subpart J).

The Polyvinyl Chloride and Copolymers Production Maximum Achievable Control Technology standard as specified in 40 Code of

Federal Regulations Part 63, Subpart J, is incorporated by reference as adopted July 10, 2002 (67 FR 45886).

§113.170. Coke Oven Batteries (40 CFR 63, Subpart L).

The Coke Oven Batteries Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part [~~CFR~~] 63, Subpart L, [~~October 27, 1993,~~] is incorporated by reference as amended through October 17, 2000 (65 FR 61744).

§113.200. Ethylene Oxide Emissions Standards for Sterilization Facilities (40 CFR 63, Subpart O).

The Ethylene Oxide Emissions Standards for Sterilization Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart O, is incorporated by reference as amended through November 2, 2001 (66 FR 55577) [~~December 14, 1999, at 64 FedReg 69637~~].

§113.240. Pulp and Paper Industry [~~Production~~] (40 CFR 63, Subpart S).

The Pulp and Paper Industry [~~Production~~] Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart S, is incorporated by reference as amended through May 14, 2001 (66 FR 24268) [~~April 12, 1999, at 64 FedReg 17555~~].

§113.250. Halogenated Solvent Cleaning (40 CFR 63, Subpart T).

The Halogenated Solvent Cleaning Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart T, is incorporated by reference as amended through September 8, 2000 (65 FR 54419) [~~December 14, 1999, 64 FedReg 69637~~].

§113.260. Group I Polymers and Resins (40 CFR 63, Subpart U).

The Group I Polymers and Resins Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart U, is incorporated by reference as amended through July 16, 2001 (66 FR 36924) [~~June 30, 1999, 64 FedReg 35023~~].

§113.280. Epoxy Resins Production and Non-Nylon Polyamides Production (40 CFR 63, Subpart W).

The Epoxy Resins Production and Non-Nylon Polyamides Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part [~~CFR~~] 63, Subpart W, is incorporated by reference as amended through May 8, 2000 (65 FR 26491) [~~March 8, 1995, is incorporated by reference~~].

§113.320. Phosphoric Acid Manufacturing Plants (40 CFR 63, Subpart AA).

The Phosphoric Acid Manufacturing Plants Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart AA, is incorporated by reference as amended through June 13, 2002 (67 FR 40814) [~~adopted June 10, 1999, at 64 FedReg 31358~~].

§113.330. Phosphate Fertilizers Production Plants (40 CFR 63, Subpart BB).

The Phosphate Fertilizers Production Plants Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart BB, is incorporated by reference as amended through June 13, 2002 (67 FR 40814) [~~adopted June 10, 1999, at 64 FedReg 31358~~].

§113.340. Petroleum Refineries (40 CFR 63, Subpart CC).

The Petroleum Refineries Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part [~~CFR~~] 63, Subpart CC, is incorporated by reference as amended through May 25, 2001 (66 FR 28840) [~~August 18, 1998, is incorporated by reference~~].

§113.350. Off-Site [~~Off-site~~] Waste and Recovery Operations (40 CFR 63, Subpart DD).

The Off-Site [~~Off-site~~] Waste and Recovery Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart DD, is incorporated by reference as amended through January 8, 2001 (66 FR 1263) [~~July 20, 1999, at 64 FedReg 38950~~].

§113.380. Aerospace Manufacturing and Rework Facilities (40 CFR 63, Subpart GG).

The Aerospace Manufacturing and Rework Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part [~~CFR~~] 63, Subpart GG, is incorporated by reference as amended through December 8, 2000 (65 FR 76941) [~~September 1, 1998, is incorporated by reference~~].

§113.390. Oil and Natural Gas Production Facilities (40 CFR 63, Subpart HH).

The Oil and [~~&~~] Natural Gas Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HH, is incorporated by reference as amended through June 29, 2001 (66 FR 34548) [~~adopted June 17, 1999, at 64 FedReg 32610~~].

§113.400. Shipbuilding and Ship Repair (Surface Coating) (40 CFR 63, Subpart II).

The Shipbuilding and Ship Repair (Surface Coating) Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part [~~CFR~~] 63, Subpart II, is incorporated by reference as amended through October 17, 2000 (65 FR 61744) [~~December 17, 1996, is incorporated by reference~~].

§113.440. Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 CFR 63, Subpart MM).

The Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart MM, is incorporated by reference as amended through August 6, 2001 (66 FR 41086).

§113.470. Containers (40 CFR 63, Subpart PP).

The Containers Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart PP, is incorporated by reference as amended through January 8, 2001 (66 FR 1263) [~~July 20, 1999, at 64 FedReg 38950~~].

§113.490. Individual Drain Systems (40 CFR 63, Subpart RR).

The Individual Drain System Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart RR, is incorporated by reference as amended through January 8, 2001 (66 FR 1263) [~~July 20, 1999, at 64 FedReg 38950~~].

§113.500. Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process (40 CFR 63, Subpart SS).

The Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart SS, is incorporated by reference [~~as adopted June 29, 1999 at 64 FedReg 34854 and~~] as amended through July 12, 2002 (67 FR 46258) [~~November 22, 1999, at 64 FedReg 63702~~].

§113.510. Equipment Leaks - Control Level 1 (40 CFR 63, Subpart TT).

The Equipment Leaks - Control Level 1 Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations

Part 63, Subpart TT, is incorporated by reference [as adopted June 29, 1999, at 64 FedReg 34854 and] as amended through July 12, 2002 (67 FR 46258) [December 22, 1999 at 64 FedReg 63702].

§113.520. Equipment Leaks - Control Level 2 (40 CFR 63, Subpart UU).

The Equipment Leaks - Control Level 2 Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart UU, is incorporated by reference as [adopted June 29, 1999, at 64 FedReg 34854 and as] amended through July 12, 2002 (67 FR 46258) [November 22, 1999, at 64 FedReg 63702].

§113.530. Oil-Water Separators and Organic-Water Separators (40 CFR 63, Subpart VV).

The Oil-Water Separators and Organic-Water Separators Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart VV, is incorporated by reference as amended through January 8, 2001 (66 FR 1263) [July 20, 1999, at 64 FedReg 38950].

§113.540. Storage Vessels (Tanks) - Control Level 2 (40 CFR 63, Subpart WW).

The Storage Vessels (Tanks) - Control Level 2 Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart WW, is incorporated by reference as amended through July 12, 2002 (67 FR 46258) [adopted June 29, 1999, at 64 FedReg 34854].

§113.550. Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (40 CFR 63, Subpart XX).

The Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart XX, is incorporated by reference as adopted July 12, 2002 (67 FR 46258).

§113.560. Generic Maximum Achievable Control Technology Standards [MACT] (40 CFR 63, Subpart YY).

The Generic Maximum Achievable Control Technology Standards [standard] as specified in 40 Code of Federal Regulations Part 63, Subpart YY, is incorporated by reference as [adopted June 29, 1999, at 64 FedReg 34854 and as] amended through February 10, 2003 (68 FR 6635) [November 22, 1999, at 64 FedReg 63695 and 63702].

§113.620. Hazardous Waste Combustors (40 CFR 63, Subpart EEE).

The Hazardous Waste Combustor Maximum achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart EEE, in incorporated by reference as amended through December 19, 2002 (67 FR 77687) [November 19, 1999 at 64 FedReg 63209].

§113.640. Pharmaceuticals Production (40 CFR 63, Subpart GGG).

The Pharmaceuticals Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part [CFR] 63, Subpart GGG, is incorporated by reference as amended through April 2, 2002 (67 FR 15486) [September 21, 1998, is incorporated by reference].

§113.650. Natural Gas Transmission and Storage Facilities (40 CFR 63, Subpart HHH).

The Natural Gas Transmission and Storage Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HHH, is incorporated by reference as amended through February 22, 2002 (67 FR 8202) [adopted June 17, 1999, at 64 FedReg 32610].

§113.670. Group IV Polymers and Resins (40 CFR 63, Subpart JJJ).

The Group IV Polymers and Resins Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart JJJ, is incorporated by reference as amended through August 6, 2001 (66 FR 40903) [June 30, 1999, at 64 FedReg 35023].

§113.690. Portland Cement Manufacturing Industry (40 CFR 63, Subpart LLL).

The Portland Cement Manufacturing Industry Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart LLL, is incorporated by reference as amended through December 6, 2002 (67 FR 72580) [adopted June 14, 1999, at 64 FedReg 31898].

§113.700. Pesticide Active Ingredient Production (40 CFR 63, Subpart MMM).

The Pesticide Active Ingredient Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart MMM, is incorporated by reference as amended through September 20, 2002 (67 FR 59336) [adopted June 23, 1999, at 64 FedReg 33550].

§113.720. Manufacture of Amino/Phenolic Resins (40 CFR 63, Subpart OOO).

The Manufacture of Amino/Phenolic Resins Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart OOO, is incorporated by reference as amended through February 22, 2000 (65 FR 8768) [adopted January 20, 2000, at 64 FedReg 29420].

§113.730. Polyether Polyols Production (40 CFR 63, Subpart PPP).

The Polyether Polyols Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart PPP, is incorporated by reference as amended through May 8, 2000 (65 FR 26491) [adopted June 1, 1999, at 64 FedReg 29420].

§113.740. Primary Copper Smelting (40 CFR 63, Subpart QQQ).

The Primary Copper Smelting Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart QQQ, is incorporated by reference as adopted June 12, 2002 (67 FR 40478).

§113.750. Secondary Aluminum Production (40 CFR 63, Subpart RRR).

The Secondary Aluminum Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart RRR, is incorporated by reference as amended through December 30, 2002 (67 FR 79808).

§113.780. Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 CFR 63, Subpart UUU).

The Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart UUU, is incorporated by reference as adopted April 11, 2002 (67 FR 17762).

§113.790. Publicly [Publically] Owned Treatment Works (40 CFR 63, Subpart VVV).

The Publicly [Publically] Owned Treatment Works Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart VVV, is incorporated by reference as amended through October 21, 2002 (67 FR 64742) [adopted October 26, 1999, at 64 FedReg 57572].

§113.810. Ferroalloys Production: Ferromanganese and Silicomanganese (40 CFR 63, Subpart XXX).

The Ferroalloys Production: Ferromanganese and Silicomanganese Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart XXX, is incorporated

by reference as amended through March 22, 2001 (66 FR 16007) [~~adopted May 20, 1999, at 64 FedReg 27450~~].

§113.840. Municipal Solid Waste Landfills (40 CFR 63, Subpart AAAA).

The Municipal Solid Waste Landfills Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart AAAA, is incorporated by reference as adopted January 16, 2003 (68 FR 2227).

§113.860. Manufacturing of Nutritional Yeast (40 CFR 63, Subpart CCCC).

The Manufacturing of Nutritional Yeast Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CCCC, is incorporated by reference as adopted May 21, 2001 (66 FR 27876).

§113.900. Solvent Extraction for Vegetable Oil Production (40 CFR 63, Subpart GGGG).

The Solvent Extraction for Vegetable Oil Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart GGGG, is incorporated by reference as amended through April 5, 2002 (67 FR 16317).

§113.910. Wet-Formed Fiberglass Mat Production (40 CFR 63, Subpart HHHH).

The Wet-Formed Fiberglass Mat Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HHHH, is incorporated by reference as adopted April 11, 2002 (67 FR 17824).

§113.930. Paper and Other Web Coating (40 CFR 63, Subpart JJJJ).

The Paper and Other Web Coating Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart JJJJ, is incorporated by reference as adopted December 4, 2002 (67 FR 72330).

§113.970. Surface Coating of Large Appliances (40 CFR 63, Subpart NNNN).

The Surface Coating of Large Appliances Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart NNNN, is incorporated by reference as adopted July 23, 2002 (67 FR 48254).

§113.1020. Surface Coating of Metal Coil (40 CFR 63, Subpart SSSS).

The Surface Coating of Metal Coil Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart SSSS, is incorporated by reference as amended through March 17, 2003 (68 FR 12590).

§113.1030. Leather Finishing Operations (40 CFR 63, Subpart TTTT).

The Leather Finishing Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart TTTT, is incorporated by reference as adopted February 27, 2002 (67 FR 9156).

§113.1040. Cellulose Products Manufacturing (40 CFR 63, Subpart UUUU).

The Cellulose Products Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart UUUU, is incorporated by reference as adopted June 11, 2002 (67 FR 40044).

§113.1050. Boat Manufacturing (40 CFR 63, Subpart VVVV).

The Boat Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart VVVV, is incorporated by reference as amended through October 3, 2001 (66 FR 50504).

§113.1070. Rubber Tire Manufacturing (40 CFR 63, Subpart XXXX).

The Rubber Tire Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart XXXX, is incorporated by reference as amended through March 12, 2003 (68 FR 11745).

§113.1260. Friction Materials Manufacturing Facilities (40 CFR 63, Subpart QQQQQ).

The Friction Materials Manufacturing Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart QQQQQ, is incorporated by reference as adopted October 18, 2002 (67 FR 64498).

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

Filed with the Office of the Secretary of State on March 21, 2003.

TRD-200301876
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 4, 2003
For further information, please call: (512) 239-4712

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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Commission on Environmental Quality (TCEQ or commission) proposes the repeal of §116.170; new §§116.120, 116.170, 116.172; and amendments to §§116.12, 116.114, 116.115, 116.143, 116.150, 116.313, 116.315, and 116.715. If adopted, the new and amended sections would be submitted to the United States Environmental Protection Agency as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission is proposing rule amendments to ensure the timely submission of updated and additional information used to process NSR applications. The commission is proposing that applicants that do not supply requested and necessary information for the processing of a permit application will have their application voided. Applications resubmitted within six months would not be subject to any further permit fees, but the applicant would be required to go back through the public notice process in order to make possible a public review of updated and current information about the proposed facility.

The commission currently requires that persons issued an NSR permit under Chapter 116 begin construction of the facility within 18 months of permit issuance or the permit will be voided. The executive director may grant an additional one time 18-month extension to this period. In the case of flexible permits, the time period to begin construction is specified in the permit with one

12-month extension available. In the large majority of cases, these cumulative time periods are sufficient to resolve issues associated with starting construction. In some cases, particularly when third party litigation is involved, a permit holder may not be able to start construction within the extended time periods. The commission is therefore proposing that an additional extension be available. The commission is specifically proposing that the first 18-month extension may be granted at the permit holder's request. Another extension of up to 18 months may be granted by the executive director to resolve litigation that is not of the permit holder's origin. The commission also believes that economic or other circumstances can arise which would affect the decision to start construction and proposes that the executive director retain discretion to grant a further extension for reasons, not specified in the rule, if the permit holder has demonstrated an intent to build the project by spending at least 15% of the estimated capital cost of the project. Any permit holder receiving a second extension would be required to demonstrate that the project continues to meet all the rules and regulations of the commission and the intent of the Texas Clean Air Act (TCAA), including protection of the public's health and physical property. Any extension of the time to begin construction of a project will subject the permit holder to additional best available control technology and offset review. Because the same conditions that would motivate a new NSR permit holder to seek extensions can also apply to holders of flexible permits, the commission proposes to apply the extension periods and conditions in proposed §116.120 to flexible permits as well. Flexible permits are used to authorize changes and modification to existing facilities.

Emission reductions in the form of offsets are obtained prior to the issuance of an NSR permit to counter the effect of new emissions on air quality. In recent years, the commission has established programs that create emission caps in Houston and Dallas and use emission credits and allowances to maintain the caps. Emission offsets are also considered in these programs and must meet the same certification standards as emission credits in order to achieve consistent protection of air quality. The commission is therefore proposing that emission offsets be certified in the same way as emission credits in 30 TAC Chapter 101, Subchapter H, Emissions Banking and Trading. The commission proposes to retain in Chapter 116 certification of future offsets internal to a facility. In many cases, these future internal offsets are credited for the replacement of existing equipment that must be kept in operation until the new, lower emitting equipment is operational. This is in contrast to offsets used externally to a facility which must occur before it can be credited. Those portions of §116.170 that concern the offset of emissions from rocket engine firing and cleaning would be transferred to a new §116.172.

Emission offsets are reductions that are used to compensate for an emission increase, usually from new construction, in the same geographic area. Consequently, offsets are not permanent reductions but will reappear in the future. In order to make meaningful emission control plans for nonattainment and prevention of significant deterioration areas, the commission needs timely and accurate information on emission reductions that will be used as offsets. The commission is proposing that emission reductions not yet certified and banked as emission credits by the effective date of these rules must be certified and banked by September 1, 2004, in order to be considered for offsets.

The commission requires adequate time to process permit renewals and, for workload management, needs to ensure that those permits closest to expiration are received first. For these reasons, the commission is also proposing that permit renewal applications be submitted at least six months, but no earlier than 18 months, before the permit will expire. By establishing a date for the earliest submission of a renewal application, the commission will also increase the possibility that renewal applications are received under the most current fee tables.

SECTION BY SECTION DISCUSSION

Subchapter A: Definitions

The definition of "offset" in §116.12 would be amended to state that an offset would have to be certified as an emission credit under Chapter 101, Subchapter H, in order to qualify as a reduction. The commission is also proposing minor changes to abbreviations, rule citations, and acronyms to conform with Texas Register formatting in the definitions.

Subchapter B: New Source Review Permits

The proposed amendments to §116.114, Application Review Schedule, would provide for the voiding of an application for a permit or permit amendment in the event of deficient information supplied with the application. After two written notifications of the deficiency, if an applicant fails to make a good faith effort to provide the required information, the executive director will void the application and notify the applicant. To pursue the project, the applicant shall submit an entirely new application with a new Form PI-1. The new application will be subject to the state and federal rules and regulations in place at the time of submittal. If a new application is submitted within six months of the voidance of the original application, the application will be exempt from the fee requirements under §116.140, Applicability. However, the applicant must go through a new technical review and republish public notice.

The commission proposes to amend §116.115, General and Special Conditions, to remove language relating to the voiding of permits and extensions of time to begin construction and transfer this language to a new §116.120.

The new §116.120, Voiding of Permits, addresses the voiding of permits and contains language relocated from §116.115. The relocated language would be amended to allow an additional extension of up to 18 months to begin construction of a project authorized with an NSR permit. This extension would be available in the case of a construction delay caused by litigation, not of the permit holder's origin, associated with the issuance of the permit. The executive director may also issue an extension if the permit holder has spent at least 15% of the estimated cost of construction on preparatory work and has demonstrated that emissions from the facility are in compliance with commission rules and the intent of the TCAA.

The proposed amendments to §116.143, Payment of Fees, would state that the permit application fee must be received before an application will be processed or before the start of any time constraints required of the commission in application processing. This amendment is intended to ensure the commission receives fees needed to cover the expense in permit review and processing. The commission retains the conditions under which fees will or will not be returned to the applicant. If no permit or amendment is issued or if the applicant withdraws the application prior to permit issuance, then one-half of the fee will be refunded. If it is determined that a permit application will meet the requirements of a permit by rule, the applicant is entitled to a refund of the fee difference. The commission proposes to add a qualification for a standard permit or de minimis classification under §116.119, De Minimis Facilities or

Sources, to those conditions under which the applicant may withdraw the permit application and receive a refund of the fee difference.

The proposed amendment of §116.150, New Major Source or Major Modification in Ozone Nonattainment Areas, would delete subsection (c) because the time period specified for the application of certain exemptions to nitrogen oxides reductions for sources in the Houston-Galveston and Beaumont-Port Arthur ozone nonattainment areas has expired.

The proposed new §116.170, Applicability of Emission Reductions as Offsets, would establish the requirements for the use of emission reductions as offsets. Most existing reductions must be certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4. Some reductions that will be used internally may still be certified under Chapter 116. The proposed section would establish the conditions by which future reductions may be used as offsets. The permit for the facility must contain special conditions that specify the date the permit holder must submit to the executive director appropriate and sufficient data that the reduction has occurred. The reduction must be achieved prior to the commencement of the permitted emissions for which the offset is required. The reduction must meet the requirements of Chapter 101, and the permit holder agrees to obtain additional offsets if the executive director determines the reductions do not satisfy the original offset requirements.

The proposed new §116.172, Emissions Offsets from Rocket Engine Firing and Cleaning, would contain the conditions under which emissions from rocket engine firing or cleaning may be offset by alternative or innovative means. These requirements would be transferred to the new section from existing §116.170. The language would be modified to state that information regarding rocket engine offsets would be submitted to the executive director instead of the commission.

Subchapter D: Permit Renewals

The proposed amendment to §116.313, Renewal Application Fees, would correct the commission's address with the correct zip code.

The proposed amendments to §116.315, Permit Renewal Submittal, would state that an application for permit renewal must be submitted at least six months but no earlier than 18 months prior to the permit expiration date. The commission intends to allow sufficient time for preparation and submission of renewals for permit holders whose permit expires within six months of the potential effective date of these proposed rules. Therefore, this provision would not become effective until February 1, 2004. With executive director approval, applications may be submitted before or after these specified time periods.

Subchapter G: Flexible Permits

The proposed amendments to §116.715, General and Special Conditions, would remove language concerning voiding of the permit. The commission proposes to apply the same extension of construction conditions, as stated in the proposed new §116.120, to flexible permits as would be applied to other NSR permits.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, there may be fiscal implications, which are not anticipated to be significant, for certain units of state and local government that own and operate equipment under NSR permit authorizations. Units of state and local government that do not own or operate equipment affected by NSR permits would not be affected by the proposed rules. The commission anticipates the costs for those affected units of government that have NSR permit applications voided by the commission will face additional public notice costs between $700 and $4,000 due to implementation of the proposed rules.

Units of government most likely to be affected by the proposed rulemaking are municipally-owned electric generating units (power plants) and landfills along with a small number of university research facilities. The total number of sites with existing NSR permits is approximately 8,000, some of which are owned and operated by units of state and local government. The commission currently processes approximately 1,200 new NSR standard permits, 350 NSR permit amendments, and 100 NSR permit renewals annually, a small number of which are submitted by units of state and local government. Of the total number of applications processed, approximately 115 are voided each year by the commission and sent back to the applicant for further processing. These proposed rules would not require additional emission controls or new capital expenses, and would not change existing permit application fee rates.

The proposed rules would require emission reductions to be used as emission offsets, which is an emission reduction that is used to compensate for emission increases from new construction, be certified in the same manner that exists for emission credits. Additionally, the proposed rules would require existing emission credits to be certified and banked as offsets by September 1, 2004, specify conditions under which permit fees may be refunded, specify a time period for the submission of permit renewal applications, and specify which fee schedule will apply to permit renewals.

The proposed rules would also implement updated requirements for applicants that have NSR permit applications voided by the commission. The proposed rules would require the commission to notify an applicant of the voidance and provide specific details concerning the application deficiencies. An applicant with a voided NSR permit application would be required to submit a new application and repeat the public notification process. The costs for public notice vary significantly depending on the location of the facility and its proximity to large metropolitan areas. Small town/city newspapers generally charge much less for publication of a public notice. The commission estimates a large city newspaper would charge approximately $3,000 for the display notice and approximately $450 for the legal notice. A smaller city newspaper would charge approximately $210 for the display notice and $20 for the legal notice. The cost for alternative language publication, if needed, is estimated to be $150. The cost for signs at affected facilities would cost approximately $300. The total costs for public notice associated with an NSR permit application, renewal, or amendment would range from $700 to $4,000, assuming alternative language notice is also required.

This proposal would waive application fees for applicants who have had applications voided and who reapply within six months. If they do not reapply during that period, the commission would require the submission of the full application fee. The fee is .3% of the estimated capital cost of the project starting with the minimum fee of $900 and a statutory maximum of $75,000.

Persons who have been issued an NSR permit currently have 18 months to begin construction of the project. A one time 18-month

extension is available to the holder on request. The commission is proposing that another extension of up to 18 months be made available for permit holders whose project has been delayed through litigation. The commission would also consider other circumstances for an extension if the permit holder meets certain conditions. Additionally, the permit holder would have to spend 15% of the cost of the project in preparation for construction. The median range of cost for NSR projects is $8 to $9 million. Fifteen percent of these figures is $1.2 million and $1.35 million, respectively.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be more consistent application of emission credits and offsets, and more timely NSR application submissions and receipt of application fees.

The total number of sites with existing NSR permits is approximately 8,000, the majority of which are large industrial businesses. The commission currently processes approximately 1,200 new NSR permits, 350 NSR permit amendments, and 100 NSR permit renewals annually, the majority of which are submitted by industry. Of the total number of applications processed, approximately 115 are voided by the commission and sent back to the applicant for further processing. These proposed rules would not require additional emission controls or new capital expenses, and would not change existing permit application fee rates.

The proposed rules would require that emission reductions used as emission offsets be certified in the same manner that exists for emission credits. Additionally, the proposed rules would require existing emission reductions to be certified and banked as offsets by September 1, 2004, specify conditions under which permit fees may be refunded, specify a time period for the submission of permit renewal applications, and specify which fee schedule will apply to permit renewals.

The proposed rules would also implement updated requirements for applicants that have NSR permit applications voided by the commission. The proposed rules would require the commission to notify an applicant of the voidance and provide specific details concerning the application deficiencies. An applicant with a voided NSR permit application would be required to submit a new application and repeat the public notification process. The costs for public notice vary significantly depending on the location of the facility and its proximity to large metropolitan areas. The commission estimates the total cost for public notice will range from $700 to $4,000 per NSR application.

This proposal would waive application fees for applicants who have had applications voided and who reapply within six months. If they do not reapply during that period, the commission would require the submission of the full application fee. The fee is .3% of the estimated capital cost of the project starting with the minimum fee of $900 up to the statutory maximum of $75,000.

Persons who have been issued an NSR permit currently have 18 months to begin construction of the project. A one time 18-month extension is available to the holder on request. The commission is proposing that another extension of up to 18 months be made available for permit holders whose project has been delayed through litigation. The commission would also consider other circumstances for an extension if the permit holder has spent 15% of the cost of the project. The median range of cost for NSR projects is $8 to $9 million. Fifteen percent of these figures is $1.2 million and $1.35 million, respectively.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which are not anticipated to be significant, for small and micro-businesses due to implementation of the proposed rules, which are intended to make procedural changes to NSR permit application requirements. The commission anticipates there will be additional fiscal implications for only those small and micro-businesses with a voided NSR permit application that would be required to submit a new application and repeat the public notification process.

The total number of sites with existing NSR permits is approximately 8,000, a small number of which may be small or micro-businesses. The commission currently processes approximately 1,200 new NSR permits, 350 NSR permit amendments, and 100 NSR permit renewals annually, a small number of which may be submitted by small or micro-businesses that would be affected by the proposed rules. Of the total number of applications processed, approximately 115 are voided by the commission and sent back to the applicant for further processing.

This rulemaking would require the commission to notify an applicant of the voidance and provide specific details concerning the application deficiencies. An applicant with a voided NSR permit application would be required to submit a new application and repeat the public notification process. The costs for public notice vary significantly depending on the location of the facility and its proximity to large metropolitan areas. The commission estimates the total cost for public notice will range from $700 to $4,000 per NSR application.

This proposal would waive application fees for applicants who have had applications voided and who reapply within six months. If they do not reapply during that period, the commission would require the submission of the full application fee. The fee is .3% of the estimated capital cost of the project starting with the minimum fee of $900 and the statutory maximum of $75,000.

The following is an analysis of the potential additional costs per employee for small or micro-businesses affected by the proposed rules. Small and micro-businesses are defined as having fewer than 100 or 20 employees, respectively. A small business which has to go through the public notification process due to a voided NSR permit application would pay an average of between approximately $700 to $4,000 per notice or $7.00 to $40 per employee, while a micro-business would have to pay an average of between $35 to $200 per employee to comply with the proposed rules. Small businesses that do not reapply for a voided permit within six months would be required to pay application fees. This cost would vary according to the size of the project, and would cause an increase in the cost per employee.

Small businesses would also be eligible to apply for the additional extension of time to begin construction and would be subject to the same requirement to spend 15% of the cost of the project in preparation. Small businesses are typically under the median cost of an NSR project and would be required to spend proportionately less to qualify for the second extension.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules would require that emission reductions used as emission offsets be certified in a manner consistent with other TCEQ regulations, establish a deadline for the certification of existing reductions as emission offsets, establish procedures for voiding permit applications, establish conditions under which permit fees may be refunded, specify a time period for the submission of permit renewal applications, and specify which fee schedule will apply to permit renewals. These proposed rules would not require additional emission controls or new capital expenses. Applicants who have their applications voided would be required to submit a new application and repeat the public notification process. Depending on location, this notification can cost from $700 to $4,000. This expense would only be incurred following a lack of action from the applicant after being notified of deficiencies in its application.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rules in Chapter 116 are not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed rules do not meet any of the statute's four applicability requirements. The commission invites public comment regarding the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the proposed rules. Promulgation and enforcement of the rules will not burden private real property. The proposed rules will not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore, will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission's preliminary consistency determination for the proposed rules in accordance with 31 TAC §505.22 found that the proposed rulemaking is consistent with the applicable CMP goal to protect and preserve the quality and values of coastal natural resource areas (31 TAC §501.12(1)), and the policy which requires that the commission protect air quality in coastal areas (31 TAC §501.14(q)). The proposed rules would require emission reductions used as emission offsets be certified in a manner consistent with other TCEQ regulations, establish a deadline for the certification of existing reductions as emission offsets, establish procedures for voiding permit applications, establish conditions under which permit fees may be refunded, specify a time period for the submission of permit renewal applications, and specify which fee schedule will apply to permit renewals. No new emissions would be authorized if these proposals are adopted. Therefore, the rulemaking is consistent with the CMP. The commission invites public comment regarding the consistency of the proposed rules with the CMP.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

New source review is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits. These amendments affect the issuance, renewal, or extension of a new source review permit. Because they do not address permit content, the amendments do not require changes to Federal Operating Permits.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 24, 2003 at 10:00 a.m. in Building F, Room 3202, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-003-116-AI. Comments must be received by 5:00 p.m., May 5, 2003. Copies of the proposed rules can be obtained from the commission's website at *http://www.tceq.state.tx.us/oprd*. For further information, please contact Clifton Wise, Policy and Regulations Division, at (512) 239-2263.

SUBCHAPTER A. DEFINITIONS

30 TAC §116.12

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and

purposes of the TCAA. The amendments are also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; and §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants. The amendment is also proposed under 42 United States Code (USC), §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The proposed amendment implements TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, and 382.016.

§116.12. Nonattainment Review Definitions.

Unless specifically defined in the TCAA [~~Texas Clean Air Act (TCAA)~~] or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in §116.150 and §116.151 of this title (relating to Nonattainment Review), shall have the following meanings, unless the context clearly indicates otherwise.

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

(7) Contemporaneous period--As follows.

(A) For major sources with the potential to emit 250 tons per year (tpy) [~~tpy~~] or more of a nonattainment pollutant, the period between:

(i) - (ii) (No change.)

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

(8) De minimis threshold test (netting)--A method of determining if a proposed emission increase will trigger nonattainment review. The summation of the proposed increase with all other creditable source emission increases and decreases during the contemporaneous period is compared to the MAJOR MODIFICATION column of Table I (in tons per year [~~tpy~~]) for that specific nonattainment area. If the major modification level is exceeded, then nonattainment review is required.

(9) Lowest achievable emission rate--For any emitting facility, that rate of emissions of a contaminant which does not exceed the amount allowable under applicable New Source Performance Standards promulgated by the EPA [~~United States Environmental Protection Agency~~] under the FCAA [~~Federal Clean Air Act~~], §111, and which reflects the following:

(A) - (B) (No change.)

(10) Major facility/stationary source--Any facility/stationary source which emits, or has the potential to emit, the amount specified in the MAJOR SOURCE column of Table I of this section or more of any air contaminant (including volatile organic compounds (VOCs)) for which a National Ambient Air Quality Standard (NAAQS) has been issued. Any physical change that would occur at a stationary source not qualifying as a major stationary source in Table I of this section, if the change would constitute a major stationary source by itself. A major stationary source that is major for VOCs [~~volatile organic compounds~~] or nitrogen oxides shall be considered major for ozone. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in [~~Title~~] 40 Code of Federal Regulations[~~, Part~~] §51.165(a)(1)(iv)(C).

(11) Major modification--As follows.

(A) Any physical change in, or change in the method of operation of a facility/stationary source that causes a significant net emissions increase for any air contaminant for which a National Ambient Air Quality Standard (NAAQS) [~~an NAAQS~~] has been issued. At a facility/stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified in the MAJOR SOURCE column of Table I of this section. At an existing major facility/stationary source, the increase must equal or exceed that specified in the MAJOR MODIFICATION column of Table I.

Figure: 30 TAC §116.12(11)(A)

(B) (No change.)

(12) (No change.)

(13) Net emissions increase--The amount by which the sum of the following exceeds zero: the total increase in actual emissions from a particular physical change or change in the method of operation at a stationary source, plus any sourcewide creditable contemporaneous emission increases, minus any sourcewide creditable contemporaneous emission decreases.

(A) - (D) (No change.)

(E) At major sources with the potential to emit 250 tons per year [~~tpy~~] or more of a nonattainment pollutant:

(i) - (ii) (No change.)

(F) For all major sources of nitrogen oxides (NO_x) [~~NO_x~~] in ozone nonattainment areas, increases and decreases of NO_x are creditable only if they resulted from authorizations or applications received on or after November 15, 1992.

(14) Offset ratio--For the purpose of satisfying the emissions offset reduction requirements of the FCAA, §173(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of emissions to total allowable emissions increases of such pollutants. The minimum offset ratios are included in Table I of this section under the definition of major modification. In order for a reduction to qualify as an offset, it must be certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking or Trading; or Discrete Emission Credit Banking and Trading), except as provided for in §116.170(b) of this title (relating to Applicability of Emission Reductions as Offsets). The reduction must not have been relied on in the issuance of a previous nonattainment or prevention of significant deterioration permit [~~to be considered creditable, offsets must be enforceable, permanent, quantifiable through a replicable methodology, real, and surplus. The reduction must be surplus at the time it was created as well as when it is used. The reduction must have occurred after January 1, 1990, and have been reported or represented in the 1990 or a subsequent emissions inventory. The reduction must not have been relied on in the issuance of a previous nonattainment or prevention of significant deterioration permit~~].

(15) Potential to emit--The maximum capacity of a facility/stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable operational limitation on the

capacity of the facility/stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions, as defined in 40 Code of Federal Regulations §51.165(a)(1)(viii), do not count in determining the potential to emit for [~~of~~] a stationary source.

(16) - (17) (No change.)

(18) Stationary source--Any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the FCAA [~~Federal Clean Air Act~~].

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 1. PERMIT APPLICATION

30 TAC §§116.114, 116.115, 116.120

STATUTORY AUTHORITY

The new and amended sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new and amended sections are also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.051, concerning Permitting Authority of Commission Rules, which authorizes the commission to issue permits for the construction of a new facility or modification of an existing facility; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; §382.0515, concerning Application for Permit, which authorizes the commission to require a permit application with plans and specifications necessary for the commission to determine if the facility will comply with applicable state and federal regulations and the intent of the TCAA; §382.0517, concerning Determination of Administrative Completion of Application, which authorizes the commission to determine when an application is administratively complete; and §382.0518, concerning Preconstruction Permit, which requires persons planning the construction or modification of a facility to obtain a permit from the commission.

The proposed new and amended sections implement TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, 382.016, 382.051, 382.0513, 382.0515, 382.0517, and 382.0518.

§116.114. Application Review Schedule.

(a) (No change.)

(b) Voiding of deficient application.

(1) (No change.)

(2) If an applicant fails to make such good faith effort, the executive director shall void the application and notify the applicant of the voidance and the remaining deficiencies in the voided application. If a new [~~the~~] application is submitted [~~resubmitted~~] within six months of the voidance, it shall meet the requirements of §116.111 of this title (relating to General Application) but will be exempt from the requirements of §116.140 of this title (relating to Applicability).

(c) (No change.)

§116.115. General and Special Conditions.

(a) (No change.)

(b) General conditions. Holders of permits, special permits, standard permits, and special exemptions shall comply with the following:

(1) (No change.)

(2) the following general conditions if the permit or amendment is issued or amended on or after August 16, 1994, regardless of whether they are specifically stated within the permit document.

[~~(A) Voiding of permit. A permit or permit amendment under this chapter is automatically void if the permit holder does one of the following:~~]

[~~(i)~~] ~~fails to begin construction within 18 months of date of issuance. The executive director may grant a one-time 18-month extension to the date to begin construction;~~]

[~~(ii)~~] ~~discontinues construction for more than 18 consecutive months prior to completion; or~~]

[~~(iii)~~] ~~fails to complete construction within a reasonable time.~~]

(A) [~~(B)~~] Report of construction progress. The permit holder shall report start of construction, construction interruptions exceeding 45 days, and completion of construction. The report shall be given to the appropriate regional office of the commission not later than 15 working days after occurrence of the event.

(B) [~~(C)~~] Start-up notification.

(i) The permit holder shall notify the appropriate air program regional office of the commission prior to the commencement of operations of the facilities authorized by the permit. The notification must be made in such a manner as to allow a representative of the commission to be present at the commencement of operations.

(ii) The permit holder shall provide a separate notification for the commencement of operations for each unit of phased construction, which may involve a series of units commencing operations at different times.

(iii) Prior to operation of the facilities authorized by the permit, the permit holder shall identify to the Office of Permitting, Remediation, and Registration the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(C) [~~(D)~~] Sampling requirements.

(i) If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures.

(ii) All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission.

(iii) The permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(D) [~~(E)~~] Equivalency of methods. The permit holder must demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit.

(E) [~~(F)~~] Recordkeeping. The permit holder shall:

(i) maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours;

(ii) keep all required records in a file at the facility site. If, however, the facility site normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the facility site;

(iii) make the records available at the request of personnel from the commission or any local air pollution control agency having jurisdiction over the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner;

(iv) comply with any additional recordkeeping requirements specified in special conditions attached to the permit;

(v) retain information in the file for at least two years following the date that the information or data is obtained; and

(vi) for persons certifying and registering a federally-enforceable emission limitation in accordance with §116.611 of this title (relating to Registration To Use a Standard Permit), retain all records demonstrating compliance for at least five years.

(F) [~~(G)~~] Maximum allowable emission rates. The total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates."

(G) [~~(H)~~] Maintenance of emission control. The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. The permit holder shall provide notification for emissions events and maintenance in accordance with §§101.201, 101.211, and 101.221 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; Scheduled Maintenance, Startup [~~Start-up~~], and Shutdown Reporting and Recordkeeping Requirements; and Operational Requirements).

(H) [~~(I)~~] Compliance with rules.

(i) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the granting of the permit.

(ii) If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated.

(iii) Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

(c) (No change.)

§116.120. Voiding of Permits.

A permit or permit amendment under this chapter is void if the permit holder does one of the following:

(1) fails to begin construction within 18 months, or a time period specified in the permit, of date of issuance. At the request of the permit holder, the executive director may grant an 18-month extension to begin construction. Permits issued to holders who have received extensions will be subject to further best available control technology review and reevaluation of netting or offsets as applicable. An additional extension of up to 18 months may be granted by the executive director if;

(A) the permit holder becomes involved in litigation not of the permit holder's initiation regarding the issuance of the permit, and demonstrates that emissions from the facility will comply with all rules and regulations of the commission and the intent of the TCAA, including protection of the public's health and physical property; or

(B) the permit holder has spent 15% of the estimated capital cost of the project on preparation for construction, and demonstrates that emissions from the facility will comply with all rules and regulations of the commission and the intent of the TCAA, including protection of the public's health and physical property.

(2) discontinues construction for more than 18 consecutive months prior to completion; or

(3) fails to complete construction within a reasonable time.

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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DIVISION 4. PERMIT FEES

30 TAC §116.143

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its

powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.051, concerning Permitting Authority of Commission Rules, which authorizes the commission to issue permits for the construction of a new facility or modification of an existing facility; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; §382.0515, concerning Application for Permit, which authorizes the commission to require a permit application with plans and specifications necessary for the commission to determine if the facility will comply with applicable state and federal regulations and the intent of the TCAA; §382.0517, concerning Determination of Administrative Completion of Application, which authorizes the commission to determine when an application is administratively complete; §382.0518, concerning Preconstruction Permit, which requires persons planning the construction or modification of a facility to obtain a permit from the commission; and §382.061, concerning Application, Permit, and Inspection Fees, which requires the commission to adopt, charge, and collect fees for each application for a permit or renewal of a permit.

The proposed amendment implements TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, 382.016, 382.051, 382.0513, 382.0515, 382.0517, 382.0518, and 382.061.

§116.143. Payment of Fees.

All permit fees will be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) or TCEQ and delivered with the application for permit or amendment to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3088 [~~78711-3087~~]. Fees must be paid at the time an application for a permit or amendment is submitted. Applications will not be considered for review nor will any time constraints required of TCEQ for application processing begin until a fee is received [~~Required fees must be received before the agency will begin examination of the application~~].

(1) (No change.)

(2) Return of fees. [~~Fees must be paid at the time an application for a permit or amendment is submitted. If no permit or amendment is issued by the agency or if the applicant withdraws the application prior to issuance of the permit or amendment, one-half of the fee will be refunded except that the entire fee will be refunded for any such application for which an exemption under Chapter 106 of this title (relating to Exemptions from Permitting) is allowed.~~] No fees will be refunded after a deficient application has been voided or after a permit or amendment has been issued by the agency. Fees will be returned under the following conditions.

(A) If no permit or amendment is issued by the agency or if the applicant withdraws the application prior to issuance of the permit or amendment, one-half of the fee will be refunded.

(B) The fee difference will be refunded if a permit application is withdrawn because the proposed construction or modification is determined to meet the requirements of:

(i) a standard permit issued under Subchapter F of this chapter (relating to Standard Permits);

(ii) a permit by rule under Chapter 106 of this title (relating to Permits by Rule); or

(iii) the conditions of §116.119 of this title (relating to De Minimis Facilities or Sources).

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

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DIVISION 5. NONATTAINMENT REVIEW

30 TAC §116.150

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.051, concerning Permitting Authority of Commission Rules, which authorizes the commission to issue permits for the construction of a new facility or modification of an existing facility; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; §382.0515, concerning Application for Permit, which authorizes the commission to require a permit application with plans and specifications necessary for the commission to determine if the facility will comply with applicable state and federal regulations and the intent of the TCAA; §382.0517, concerning Determination of Administrative Completion of Application, which authorizes the commission to determine when an application is administratively complete; and §382.0518,

concerning Preconstruction Permit, which requires persons planning the construction or modification of a facility to obtain a permit from the commission.

The proposed amendment implements TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, 382.016, 382.051, 382.0513, 382.0515, 382.0517, 382.0518, and 382.061.

§116.150. New Major Source or Major Modification in Ozone Nonattainment Areas.

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

~~[(c) For sources located in the Houston/Galveston (HGA) ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) or the Beaumont/Port Arthur (BPA) ozone nonattainment area (Hardin, Jefferson, and Orange counties), the following shall apply to NO_x emissions.]~~

~~[(1) For permit applications in review after April 12, 1995, and declared administratively complete on or before December 31, 1997:]~~

~~[(A) Subsection (a)(1), (2), and (4) of this section do not apply.]~~

~~[(B) The requirements of subsection (a)(3) of this section apply and shall be made a part of the source's permit. However, the requirements shall be held in abeyance for a period ending no sooner than January 1, 1998. The Commission may on or after January 1, 1998, and after making the determinations described in paragraph (2) of this subsection, require the source to implement the permit requirements imposed pursuant to the requirements of subsection (a)(3) of this section. If the Commission requires implementation, the source shall obtain the NO_x offsets as specified in subsection (a)(3) of this section no later than January 1, 2000.]~~

~~[(C) Documentation of proposed increases of NO_x equal to or greater than 40 tons per year, as well as documentation of netting calculations for these increases, shall be submitted.]~~

~~[(D) A source otherwise subject to the requirements of subsection (a)(1) - (4) of this section may, at its option, comply with any of those requirements.]~~

~~[(2) The commission has reviewed the results of the Urban Airshed Model for the HGA and BPA ozone nonattainment areas, using data from the Coastal Oxidant Assessment for Southeast Texas study, in accordance with the United States Environmental Protection Agency document "Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)" (December 1993). The commission has determined that additional NO_x reductions in the HGA and BPA nonattainment areas will contribute to attainment of the National Ambient Air Quality Standards for ozone. The commission will notify sources which have permit requirements in abeyance pursuant to paragraph (1)(B) of this subsection, that the period of abeyance has ended. The source shall obtain the NO_x offsets as specified in subsection (a)(3) of this section no later than January 1, 2000.]~~

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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DIVISION 7. EMISSION REDUCTIONS: OFFSETS

30 TAC §116.170

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

STATUTORY AUTHORITY

The repeal is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeal is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air.

The proposed repeal implements TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, and 382.012.

§116.170. Applicability for Reduction Credits.

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

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30 TAC §116.170, §116.172

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the

protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.051, concerning Permitting Authority of Commission Rules, which authorizes the commission to issue permits for the construction of a new facility or modification of an existing facility; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; §382.0515, concerning Application for Permit, which authorizes the commission to require a permit application with plans and specifications necessary for the commission to determine if the facility will comply with applicable state and federal regulations and the intent of the TCAA; §382.0517, concerning Determination of Administrative Completion of Application, which authorizes the commission to determine when an application is administratively complete; and §382.0518, concerning Preconstruction Permit, which requires persons planning the construction or modification of a facility to obtain a permit from the commission. The new sections are also proposed under 42 USC, §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The proposed new sections implement TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, 382.016, 382.051, 382.0513, 382.0515, 382.0517, and 382.0518.

§116.170. Applicability of Emission Reductions as Offsets.

(a) No reduction may be used as an offset unless it has been certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; or Discrete Emission Credit Banking and Trading), except as provided for in subsection (c) of this section.

(b) Reductions not yet certified and banked as an emission credit must be certified and banked with the executive director by September 1, 2004 in order to be considered for use as an offset.

(c) A future reduction may be used as an offset for a permit provided that:

(1) the permit contains special conditions that specify the date by which the permit holder must submit to the executive director appropriate and sufficient data to verify that the reduction has occurred and the reduction is provided by start of operation;

(2) the reduction must be achieved prior to commencement of the permitted emissions for which the offset is required;

(3) the reduction meets all of the requirements of Chapter 101, Subchapter H, Division 1 or 4 of this title when submitted to the executive director for review per the requirements of the issued permit; and

(4) the permit holder agrees to obtain additional offsets if the review by the executive director indicates the reductions do not satisfy the original offset requirements.

§116.172. Emissions Offsets from Rocket Engine Firing and Cleaning. Emissions increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source, shall be allowed to be offset by alternative or innovative means, provided the following conditions are met.

(1) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source permitted to test such engines as of November 15, 1990.

(2) The source demonstrates to the satisfaction of the executive director that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

(3) The source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration, or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(4) The source will comply with an alternative measure, imposed by the executive director, designed to offset any emissions increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the executive director may impose an emissions fee to be paid, which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous three years.

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

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SUBCHAPTER D. PERMIT RENEWALS

30 TAC §116.313, §116.315

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.051, concerning Permitting Authority of Commission Rules, which authorizes the commission to issue permits for the construction of a new facility or modification of an existing facility; §382.0513, concerning Permit Conditions,

which authorizes the commission to establish and enforce permit conditions; §382.0515, concerning Application for Permit, which authorizes the commission to require a permit application with plans and specifications necessary for the commission to determine if the facility will comply with applicable state and federal regulations and the intent of the TCAA; §382.0517, concerning Determination of Administrative Completion of Application, which authorizes the commission to determine when an application is administratively complete; §382.0518, concerning Preconstruction Permit, which requires persons planning the construction or modification of a facility to obtain a permit from the commission; and §382.061, concerning Application, Permit, and Inspection Fees, which requires the commission to adopt, charge, and collect fees for each application for a permit or renewal of a permit.

The proposed amendments implement TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, 382.016, 382.051, 382.0513, 382.0515, 382.0517, 382.0518, and 382.061.

§116.313. Renewal Application Fees.

(a) (No change.)

(b) Fees are due and payable at the time the renewal application is filed. No fee will be accepted before the permit holder has been notified by the commission that the permit is scheduled for review. All permit review fees shall be remitted by check, certified check, electronic funds transfer, or money order payable to the Texas Commission on Environmental Quality (TCEQ) and mailed to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3088 [~~78711-3087~~]. Required fees must be received before the agency will consider an application to be complete.

§116.315. Permit Renewal Submittal.

(a) An application for renewal must be submitted at least six months, but no earlier than 18 months, [~~90 days~~] prior to expiration of the permit or the permit will expire. This subsection will be effective on February 1, 2004 [~~The executive director may extend the time period for submitting an application~~].

(b) With executive director approval, the application may be submitted before or after the time period specified in subsection (a) of this section.

(c) [~~(b)~~] Any permit issued:

(1) before December 1, 1991, is subject for review 15 years after the date of issuance;

(2) on or after December 1, 1991, is subject for review every ten years after the date of issuance.

(3) at non-federal sources on or after December 1, 1991, may, for cause, contain a provision requiring renewal between five and ten years.

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

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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SUBCHAPTER G. FLEXIBLE PERMITS

30 TAC §116.715

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.016, concerning Monitoring Requirements, Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.051, concerning Permitting Authority of Commission Rules, which authorizes the commission to issue permits for the construction of a new facility or modification of an existing facility; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; §382.0515, concerning Application for Permit, which authorizes the commission to require a permit application with plans and specifications necessary for the commission to determine if the facility will comply with applicable state and federal regulations and the intent of the TCAA; §382.0517, concerning Determination of Administrative Completion of Application, which authorizes the commission to determine when an application is administratively complete; §382.0518, concerning Preconstruction Permit, which requires persons planning the construction or modification of a facility to obtain a permit from the commission; and §382.061, concerning Application, Permit, and Inspection Fees, which requires the commission to adopt, charge, and collect fees for each application for a permit or renewal of a permit.

The proposed amendment implements TWC, §5.103 and §5.105; and TCAA, §§382.002, 382.011, 382.012, 382.016, 382.051, 382.0513, 382.0515, 382.0517, 382.0518, and 382.061.

§116.715. General and Special Conditions.

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

(c) The following general conditions shall be applicable to every flexible permit.

(1) [~~Voiding of permit. A flexible permit or flexible permit amendment under this subchapter is automatically void if the holder fails to complete construction as specified in the flexible permit. Upon request, the executive director may grant a one time 12-month extension of the date to complete construction.~~] This section does not apply to physical or operational changes allowed without an amendment under §116.721 of this title (relating to Amendments and Alterations).

(2) - (8) (No change.)

(9) Maintenance of emission control. The facilities covered by the flexible permit shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for emissions events and scheduled maintenance shall be made in accordance with §101.201 and §101.211 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; and Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements).

(10) (No change.)

(d) (No change.)

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

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Stephanie Bergeron
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Texas Commission on Environmental Quality
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER B. COASTAL EROSION PLANNING AND RESPONSE

The Texas General Land Office (Land Office) proposes new §15.41, relating to Evaluation Process for Coastal Erosion Studies and Projects, §15.42, relating to Funding Projects from the Coastal Erosion Response Account, §15.43, relating to Coastal Boundary Surveys and Landowner Consent, and §15.44, relating to Beneficial Use of Dredged Material. New §§15.41 - 15.43 replace repealed sections dealing with the same subject matter. New §15.44, relating to Beneficial Use of Dredged Material adds new text to conform to legislative changes.

The Land Office simultaneously proposes the repeal of §15.21, relating to Evaluation Process for Coastal Erosion Studies and Projects, §15.22, relating to Funding Projects from the Coastal Erosion Response Account, and §15.23, relating to Coastal Boundary Surveys. The repealed sections will be replaced by the new sections dealing with the same subject matter.

The new sections are proposed pursuant to the Joe Faggard Coastal Erosion Planning and Response Act, 76th Legislature, Regular Session Senate Bill 1690 (CEPRA), as amended by House Bill 2793 and House Bill 2794, 77th Legislature, Regular Session, Texas Natural Resources Code, Chapter 33, Subchapter H. The CEPRA requires the Land Office to implement a program of coastal erosion avoidance, remediation, and planning. House Bill 2793 changed the cost-share requirement for qualified project partners from 25% to 15%. House Bill 2794 requires the Land Office to adopt rules providing for the placement of material dredged in constructing and maintaining navigation inlets and channels of the state on eroding beaches or for restoration of eroding wetlands wherever practicable. The proposed rules outline the process by which the Land Office will evaluate and assist in the funding of coastal erosion studies and projects in cooperation with qualified project partners. The CEPRA, §33.601(11), defines "qualified project partner" as "a local government, state or federal agency, institution of higher education, homeowners' association, or other public or private entity that enters into an agreement with the land office to finance, study, design, install, or maintain an erosion response project." The Land Office may expend funds from the coastal erosion response account, which was established by the CEPRA, to support a study or project undertaken independently by the Land Office, or in conjunction with a qualified project partner. The CEPRA, as amended by House Bill 2793, requires qualified project partners to pay at least 15% of shared project costs that are identified in a project cooperation agreement.

Proposed new §15.41 outlines the application process for entities that would like to become qualified project partners with the Land Office including an initial evaluation of project goal summaries followed by a further evaluation of preferred alternatives. Section 15.41(1) specifies the initial evaluation process the Land Office will use to evaluate project goal summaries submitted by potential project partners. These summaries must be submitted no later than December 1 of the first year of the state fiscal biennium in which funding is sought (except to address an emergency situation) and must contain the information identified in §15.41(1)(A). The Land Office will evaluate and rank project goal summaries based on the criteria in §15.41(1)(C) and (D), with priority given to the considerations in §15.41(1)(D). Based on the initial evaluation, the Land Office will designate proposed projects as either priority projects or alternate projects. The Land Office will invite the potential project partner for a project designated as a priority project to become a qualified project partner and work cooperatively to evaluate alternatives for addressing the erosion problem(s) identified in the project goal summaries.

Proposed new §15.41(2) describes the alternatives evaluation process. The Land Office and a potential project partner for a project designated as a priority project enter into a project cooperation agreement that will specify how the alternatives-evaluation process will be conducted cooperatively. By entering into a project cooperation agreement, the potential project partner becomes a qualified project partner. The Land Office and qualified project partner will then cooperatively evaluate alternatives. The alternatives evaluation process will include an evaluation of feasibility and cost effectiveness of preferred alternatives, as well as whether a qualified project partner has already made or received a binding commitment to fund all or a portion of the proposed project.

Proposed new §15.42 concerns the details of project funding. If the Land Office decides to authorize project funding from the coastal erosion response account, the Land Office and qualified project partner will amend the project cooperation agreement to define explicitly the terms under which the Land Office will assist in funding the project. Standards for the qualified project partner's statutory requirement to pay at least 15% of shared project costs are described in §15.42(b).

Proposed new §15.43 addresses the coastal boundary survey requirement contained in Texas Natural Resources Code, §33.136. If a coastal boundary survey has previously been conducted in the area where an erosion response project may be funded from the coastal erosion response account,

§15.43(a)(1) allows the Land Office to determine that current conditions are accurately reflected in the existing survey. Based upon that determination, the Land Office has the discretion to determine that a new survey is not required before project construction. Section 15.43(a)(2) requires surveys to locate the boundary based on the date the original land grant was made. The boundary is determined in a different manner depending on whether the upland property was originally granted under the civil or common law. In addition, proposed new §15.43 addresses the requirement of consent for projects located on permanent school fund land and on private property in accordance with Texas Natural Resources Code, §33.609.

Proposed new §15.44 provides for evaluation by the Land Office of the practicality and suitability of a proposed beneficial use of dredged material, considering sediment composition, relative cost of dredged material, and adverse environmental impacts. The rules reference guidance documents from the U.S. Army Corps of Engineers (Corps) which the Land Office may consider in determining suitability and practicality of using dredged material. In addition, comments and recommendations by various state and federal natural resource agencies may be considered in evaluating potential adverse environmental impacts of beneficial use projects.

Applicable federal law allows the state to contract with the Corps for placement of material dredged in the construction and maintenance of navigation inlets and channels of the state with federal funds on designated beaches and eroding wetlands. Under a memorandum of agreement, dated July 27, 2001, between the Land Office and the Corps covering 33 federally maintained navigational channels, the state may choose to participate in Corps dredging projects and is obligated to pay the difference between the estimated cost of traditional disposal of material dredged from a federally maintained channel and the actual cost of dredging and placement of that material onto a designated beach or coastal area. Costs of dredging and placement include transportation, material, fuel, engineering, design, and construction management. This cost differential can result in a substantial savings to the state and qualified project partners as compared to upland sources for material for beach nourishment or wetland restoration, depending on the proximity of the source of dredged material to the placement area. For example, upland sources of beach-quality sand including transportation costs can be as much as $10.00 per cubic yard. Projects undertaken with the Corps providing for beach placement of dredged material have resulted in costs to the state of approximately $1.00 to $5.00 per cubic yard, depending on the scope of the project and the pumping distance of the dredged material.

Bill Peacock, Deputy Commissioner for the Coastal Resources Program Area, has determined that for the first five-year period that the proposed rulemaking is in effect there will be no fiscal implications for state government. There will be fiscal implications for the local governments as a result of reducing the percentage for the qualified project partner's cost-sharing requirement. It is estimated that local governments that elect to participate in CEPRA projects will experience a 40% reduction in costs for a project of the same scope and size for each year of the first five-year period that the proposed new rules are in effect. For example, for a project with a total cost of $1,000,000.00, the project partner's cost-sharing requirement would be reduced from $250,000.00 to $150,000.00 resulting in a cost savings to the local government of $100,000.00 or 40%. In an area where erosion response projects are constructed, local governments may benefit from increased tax revenues from enhanced property values.

Mr. Peacock also has determined that for each year of the first five-year period the proposed rulemaking is in effect, the public benefit will be that public beaches, public and private coastal property, and coastal natural resources will be preserved, enhanced, or restored, or that losses sustained by these public and private resources will be reduced. In addition, the new section pertaining to guidelines for beneficial use of dredged material will enable the state and qualified project partners to obtain material to nourish beaches or restore wetlands at relatively low cost, while at the same time preserving the quality and character of the beaches or wetlands. Mr. Peacock has determined that there will be no additional cost of compliance for small or large businesses or individuals.

The Land Office has determined that the proposed rulemaking will have no local employment impact that requires an impact statement pursuant to the Government Code, §2001.022.

The proposed rulemaking is not subject to the Texas Coastal Management Program (CMP), 31 TAC §505.11(a)(1), relating to the Actions and Rules Subject to the Coastal Management Program. Individual erosion response projects undertaken in compliance with these rules may be subject to the CMP, and consistency with the CMP will be individually determined at the appropriate stage of project planning.

The Land Office has prepared a takings impact assessment for the proposed rulemaking pursuant to Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. The following is a summary of the analysis. The stated purpose of this rulemaking action is to outline the process by which the Land Office evaluates and assists in the funding of coastal erosion studies and projects in cooperation with qualified project partners and provide for evaluation by the Land Office of the suitability of dredged material, considering sediment composition, relative cost of material, and adverse environmental impacts. The proposed action achieves the stated purpose in accordance with the CEPRA. The proposed rulemaking does not place any additional burdens on private real property. The Land Office has determined that the proposed rulemaking will not result in a taking of private property.

To receive a copy of the takings impact assessment or comment on the proposed rulemaking, please send a written request or comment to Melinda Tracy, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311 or e-mail to melinda.tracy@glo.state.tx.us. Comments must be received no later than 30 days from the date of publication of this proposal.

31 TAC §§15.21 - 15.23

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

The repeal of §§15.21 - 15.23 is proposed under the authority of Texas Natural Resources Code, §33.602(c), which authorizes the commissioner to adopt rules as necessary to implement a program of coastal erosion avoidance, remediation, and planning.

Texas Natural Resources Code §33.602(c) is affected by these repeals.

§15.21. Evaluation Process For Coastal Erosion Studies And Projects.

§15.22. Funding Projects From the Coastal Erosion Response Account.

§15.23. Coastal Boundary Surveys.

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

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Larry L. Laine
Chief Clerk, Deputy Commissioner
General Land Office
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For further information, please call: (512) 305-9129

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31 TAC §§15.41 - 15.44

The new rules are proposed under the Texas Natural Resources Code, §33.602(c) which provides the commissioner of the General Land Office with the authority to adopt rules to implement Subchapter H, Chapter 33, Texas Natural Resources Code, concerning coastal erosion and the Texas Natural Resources Code, §33.602(d) which provides the commissioner of the General Land Office with the authority to adopt rules concerning the beneficial use of dredged material.

Texas Natural Resources Code, §§33.601 - 33.605 are affected by the proposed new rules.

§15.41. Evaluation Process For Coastal Erosion Studies And Projects.

The General Land Office (Land Office) will evaluate potential projects for funding from the coastal erosion response account based on a two-stage evaluation process as described in this section, including an initial evaluation of project goal summaries followed by a further evaluation of preferred alternatives.

(1) Initial evaluation of project goal summaries submitted to the Land Office by potential project partners.

(A) A potential project partner seeking funds from the coastal erosion response account must submit a project goal summary to the Land Office no later than December 1 of the first year of the state fiscal biennium in which funding is sought; provided that the Land Office in its discretion may accept a project summary that will address an emergency situation after December 1. The project goal summary must include the following:

(i) the name of the entity that will be the potential project partner and the name, mailing address, email address, facsimile number, and telephone number of the person who will represent the potential project partner and be the primary point of contact with the Land Office;

(ii) the location and geographic scope of the erosion problem;

(iii) a description of the erosion problem and the severity of erosion in the area;

(iv) the economic impacts of erosion in the area;

(v) a description of how public infrastructure and resources or private property have been impacted or threatened by erosion in the area;

(vi) the natural resource impacts of erosion in the area;

(vii) the estimated cost to complete the erosion response project;

(viii) whether the project will incorporate the beneficial use of dredged materials;

(ix) potential cosponsors and sources of funding with an estimated percentage of the project to funded with non-state funds;

(x) whether the potential partner can make a binding funding commitment of at least 15% of the total estimated project cost;

(xi) a description of an emergency erosion situation the project is intended to address, if any; and

(xii) the desired outcome or goals of the project for which funding is sought from the coastal erosion response account.

(B) The Land Office will accept project goal summaries by:

(i) mail sent to the General Land Office, Attn: Director, Coastal Resources Program Area, Coastal Stewardship Division, P.O. Box 12873, Austin, TX 78711-2873;

(ii) fax sent to (512) 475-0680; or

(iii) email sent to coastalprojects@glo.state.tx.us.

(C) The Land Office will evaluate and rank project goal summaries received based on the following criteria:

(i) the feasibility and cost-effectiveness of the proposed project;

(ii) the economic impacts of erosion in the area of the proposed project;

(iii) the effect of the proposed project on public infrastructure or resources threatened by erosion;

(iv) the effect of the proposed project on natural resources threatened by erosion;

(v) the effect of the proposed project on private property threatened by erosion;

(vi) if the project is located within the jurisdiction of a local government that administers a beach/dune program, whether the local government is adequately administering its duties under the Open Beaches Act (Texas Natural Resources Code, Chapter 61) and the Dune Protection Act (Texas Natural Resources Code, Chapter 63);

(vii) whether the project will provide for beneficial use of beach-quality sand dredged in constructing and maintaining navigation inlets and channels of the state; and

(viii) whether funding can be leveraged with sources other than the coastal erosion response account; and

(ix) whether the potential project partner has already made or received a binding commitment to fund all or a portion of a given project.

(D) After ranking proposed projects according to the criteria detailed in subparagraph (C) of this paragraph, the Land Office will further evaluate project goal summaries received based on the following priority criteria:

(i) whether funding the proposed project will contribute to balance in the geographic distribution of benefits for coastal erosion response projects in Texas that are proposed or have received funding from the coastal erosion response account;

(ii) whether federal and local financial participation in the project is maximized;

(iii) whether the project achieves efficiencies and economies of scale;

(iv) the relative severity of erosion in each area;

(v) the needs in other critical coastal erosion areas;

(vi) whether the proposed project will address an emergency erosion situation in the area; and

(vii) the cost of the proposed project in relation to the amount of money available in the coastal erosion response account.

(E) The Land Office will conduct the initial evaluation in consultation and coordination with the potential project partner, as deemed necessary by the Land Office. Based on the initial evaluation, the Land Office will designate proposed projects as either priority projects or alternate projects.

(i) If, as a result of the initial evaluation, the Land Office designates a potential project as an alternate project, the potential project partner will be notified in writing. The Land Office will retain the project goal summary and may reevaluate it if future conditions warrant funding the project in the current state fiscal biennium. The project goal summary must be resubmitted by the potential project partner for consideration for funding in a subsequent state fiscal biennium.

(ii) If the Land Office's initial evaluation results in a designation of a proposed project as a priority project, the Land Office will invite the potential project partner to continue to work cooperatively with the Land Office by becoming a qualified project partner.

(2) Evaluation of preferred alternatives with qualified project partners for priority projects.

(A) The Land Office and potential project partner for a priority project must enter into a project cooperation agreement to continue the evaluation process. Upon entering into a project cooperation agreement, the potential project partner will become a qualified project partner. The Land Office and qualified project partner will cooperatively evaluate alternatives for addressing the erosion problem(s) identified in the project goal summary of a priority project.

(B) The project cooperation agreement with the qualified project partner will explicitly define the activities to be undertaken by the Land Office and the qualified project partner in the evaluation of alternatives. Funds expended by a qualified project partner in conformance with the project cooperation agreement can be used to offset the qualified project partner's cost-sharing requirement. The Land Office may, at its sole discretion, fund studies or activities that are part of the alternatives-evaluation process.

(C) During the alternatives-evaluation process, the Land Office will evaluate projects based on the following criteria:

(i) the feasibility and cost-effectiveness of preferred alternative projects in meeting the goals of the project goal summary; and

(ii) whether the qualified project partner has already made or received a binding commitment to fund all or a portion of a given project.

(D) The Land Office will determine whether a qualified project partner should receive funds from the coastal erosion response account based on the final prioritization of preferred alternatives according to the considerations detailed in subparagraph (C) of this paragraph.

§15.42. Funding Projects From the Coastal Erosion Response Account.

(a) If the Land Office determines that a project should receive funds from the coastal erosion response account, the Land Office and the qualified project partner will amend the project cooperation agreement that was entered into earlier in the evaluation process. The Land Office shall explicitly describe in the amended project cooperation agreement the terms and conditions under which the Land Office will fund the project.

(b) Qualified project partners are required to pay at least 15% of the shared project costs in accordance with Texas Natural Resources Code, §33.603(c).

(1) The project cooperation agreement shall specify the terms of the qualified project partner's commitment to pay at least 15% of shared project costs.

(2) No costs incurred by a potential project partner before becoming a qualified project partner by entering into a project cooperation agreement with the Land Office may be used to offset the 15% cost-sharing requirement of the CEPRA.

(3) In-kind goods or services provided by the qualified project partner after entering into a project cooperation agreement with the Land Office may offset the 15% cost-sharing requirement, if the qualified project partner provides the Land Office with a reasonable basis for estimating the monetary value of those goods or services. The decision on whether to allow any in-kind good or service to offset the 15% cost-sharing requirement is in the sole discretion of the Land Office.

(4) Local governments that receive financial assistance from the state to clean and maintain public beaches fronting the Gulf of Mexico under Chapter 25 of this title, relating to Beach Cleaning and Maintenance Assistance Program, will not be allowed to use funds received under that program to meet the 15% cost-sharing requirement.

§15.43. Coastal Boundary Surveys and Landowner Consent.

(a) No person may undertake an action relating to erosion response on or immediately landward of a public beach or submerged land until the person has conducted and filed a coastal boundary survey with the Land Office in accordance with Texas Natural Resources Code, §33.136.

(1) If a coastal boundary survey for the area of an erosion response project that may be funded from the coastal erosion response account has previously been approved and filed with the Records and Archives Division of the Land Office, upon the request of the qualified project partner the Land Office shall determine whether that survey adequately reflects current conditions. If the survey adequately reflects current conditions, the Land Office may determine that a new coastal boundary survey is not required before the project is constructed. The decision of whether a new survey is required before construction of an erosion response project is in the sole discretion of the Land Office.

(2) The boundary depicted on any coastal boundary survey that is required before funding a project from the coastal erosion response account shall be delineated according to the law under which the upland property was originally granted by the sovereign.

(b) A coastal erosion response project on permanent school fund land may not be undertaken without obtaining the written consent of the school land board in accordance with Texas Natural Resources Code, §33.609.

(c) A coastal erosion response project on private property other than that encumbered by the common law rights of the public affirmed by Texas Natural Resources Code, Chapter 61, may not be undertaken without obtaining the consent of the property owner in accordance with Texas Natural Resources Code, §33.609.

§15.44. Beneficial Use of Dredged Material.

(a) Wherever practicable, material dredged in constructing and maintaining navigation inlets and channels of the state shall be placed on eroding beaches or used to restore eroding wetlands. The Land Office shall evaluate the practicality and suitability of proposed beneficial use of dredged material in accordance with this section and shall consider sediment composition, relative cost of the material, and adverse environmental impacts.

(b) A portion of the shoreline which is experiencing an historical erosion rate of greater than two feet per year based on the published data of the University of Texas at Austin Bureau of Economic Geology, is considered an eroding area for the purposes of this subchapter.

(c) For the purposes of this subchapter, beneficial use of dredged material shall not be deemed practicable if the cost to the State and local project partner for placement of the material dredged in constructing and maintaining navigation inlets and channels of the State exceeds the cost of obtaining similar material from an upland source, including transportation costs. In the case of placement for wetland restoration, the cost of soil preparation and treatment may also be considered.

(d) In determining the suitability and practicality of dredged material for beach placement the Land Office may refer to the guidance found in Chapter 9 of U.S. Army Corps of Engineers, Publication No. EM 1110-2-5026 "Engineering & Design, Beneficial Uses of Dredged Material," USACE, June 1987 and U.S. Army Corps of Engineers, Publication No. EM 1110-2-3301, "Design of Beach Fills," USACE, May 1995. Only beach-quality sand shall be considered for beach placement.

(e) In this section "beach-quality sand" means sediment material that:

(1) has effective grain size, mineralogy, and quality that approximates the existing beach material in the placement area;

(2) is low in fine grain, silty, or clayey sediments; and

(3) contains no hazardous substances listed in the Code of Federal Regulations, Volume 40, Part 300, in concentrations which are harmful to human health or the environment as determined by applicable, relevant, and appropriate requirements established by the local, state, and federal governments.

(f) In determining the suitability and practicality of placement of dredged material for wetland restoration, the Land Office may refer to the guidance found in Chapter 5 of U.S. Army Corps of Engineers, Publication No. EM 1110-2-5026 "Engineering & Design, Beneficial Uses of Dredged Material," USACE, June 1987.

(g) In determining whether a proposed beneficial use of dredged material has unacceptable adverse environmental impacts, the Land Office may consider any recommendations or comments by the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Natural Resources Conservation Service, the U.S. Army Corps of Engineers, the Texas Natural Resource Conservation Commission, the Texas Parks and Wildlife Department, and the implementing agency for a national estuary program developed under Section 320 of the Federal Water Pollution Control Act (33 U.S.C. Section 1330) and approved by the governor of Texas and the administrator of the United States Environmental Protection Agency.

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

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Larry L. Laine
Chief Clerk, Deputy Commissioner
General Land Office
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For further information, please call: (512) 305-9129

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 359. WATER BANKING

31 TAC §359.2, §359.14

The Texas Water Development Board (the board) proposes amendment to 31 TAC §359.2 and §359.14, concerning Water Banking. The amendments are proposed to update a definition and to change the requirement for fee schedule approval. The amendments will provide cleanup and clarification as a result of the four-year rule review requirement of Texas Government Code §2001.039.

The board proposes to amend §359.2, Definitions, to update the definition of "Commission" from the "The Texas Natural Resource Conservation Commission" to "The Texas Commission on Environmental Quality." Amendment to §359.14, Fees, is proposed to change the requirement for approval of the fee schedule from two years, to an as needed basis.

The original intent in adopting the fee schedule revisions every two years was to provide an adjustment to the fees if market prices made the amount unduly burdensome and interfered with the use of the water bank for marketing. However, based on the water bank activities to date, staff considers the current fee structure reasonable and does not, at this time, foresee any significant water market changes or objections to the fee schedule by the public that would warrant a biennial reconsideration of the fee.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period these sections are in effect there will not be fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Callahan has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clearer, more concise board rules governing these areas. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendment will be accepted for 30 days following publication and may be submitted to Suzanne Schwartz, General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to suzanne.schwartz@twdb.state.tx.us or by fax at (512) 463-5580.

Statutory authority: Water Code, §6.101 and §15.703(b).

Cross reference to statute: Water Code, Chapter 15, Subchapter K and Chapter 11, Subchapter E.

§359.2. Definitions.

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

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

(4) Commission--The Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~].

(5) - (13) (No change.)

§359.14. Fees.

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

(c) As necessary, [~~At least once every two years,~~] the executive administrator shall obtain board approval of the fee schedule. The executive administrator shall provide notice in the *Texas Register* 30 days before board action considering approval of such fee schedule, and shall provide copies of the proposed fee schedule upon request. In approving such fee schedule, the board shall consider the expenses of operating the bank.

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

Filed with the Office of the Secretary of State on March 19, 2003.

TRD-200301824
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: May 21, 2003
For further information, please call: (512) 463-7981

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 100. IMMUNIZATION REGISTRY

25 TAC §§100.1 - 100.6

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended and new sections, submitted by the Texas Department of Health have been automatically withdrawn. The amended and new sections as proposed appeared in the September 20, 2002 issue of the *Texas Register* (27 TexReg 8886).

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301896

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25 TAC §§100.2 - 100.11

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed repealed sections, submitted by the Texas Department of Health have been automatically withdrawn. The repealed sections as proposed appeared in the September 20, 2002 issue of the *Texas Register* (27 TexReg 8887).

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301897

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 35. BRUCELLOSIS

SUBCHAPTER A. ERADICATION OF BRUCELLOSIS IN CATTLE

4 TAC §35.4

The Texas Animal Health Commission adopts amendments to Chapter 35 entitled, "Brucellosis." Specifically, the adoption amends §35.4, related to Entry, Movement and Change of Ownership. The purpose of this adoption is to remove an entry requirement for rodeo bulls coming to Texas in order to conform the state requirement to the federal standard recently adopted by the United States Department of Agriculture. The amendment to §35.4 is adopted without changes to the proposed text as published in the December 27, 2002, issue of the *Texas Register* (27 TexReg 12125) and will not be republished.

On November 22, 2002, the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) adopted a final rule (Docket 01-095-2) that eliminated the annual brucellosis testing requirement for rodeo bulls moving interstate between Brucellosis Free States. The commission has a requirement in §35.4 (b) (2) (C) that rodeo bulls coming to Texas need a brucellosis test. In order to conform the state requirement to the federal standard, the commission is proposing to remove that requirement. The commission would note that bulls from states not classified as Brucellosis Free (i.e., Missouri) would fall under the general requirement of needing to be tested.

No comments were received regarding adoption of the rule.

The amendment is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, Section 161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by Section 161.041 (b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in Section 161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in Section 161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in Section 161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in Section 161.048.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Section 161.061 provides that if the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 20, 2003.

TRD-200301837
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: April 9, 2003
Proposal publication date: December 27, 2002
For further information, please call: (512) 719-0714

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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §§273.3, 273.5, 273.7, 273.8

The Texas Optometry Board adopts amendments to §§273.3, 273.5, 273.7, and 273.8, without change to the proposed text published in the December 20, 2002, issue of the *Texas Register* (27 TexReg 11887).

The amendments correct legal citations to the Texas Optometry Act. The new citations will be to the Act as codified in the Texas Occupations Code.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 18, 2003.

TRD-200301796
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: April 7, 2003
Proposal publication date: December 20, 2002
For further information, please call: (512) 305-8502

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CHAPTER 275. CONTINUING EDUCATION

22 TAC §275.1

The Texas Optometry Board adopts amendments to §275.1, concerning General Requirements without change to the proposed text published in the December 20, 2002, issue of the *Texas Register* (27 TexReg 11888).

The amendments bring the rule into compliance with earlier amendments to §275.2 (27 TexReg 2237), which combined the continuing education credit hours limitation on on-line and correspondence courses so that a license may receive eight credit hours for any combination of the courses. The amendments will also correct the legal citations to the Texas Optometry Act, and references to the correct name for the national certifying organization, the Association of Regulatory Boards of Optometry.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.308. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §351.308 as setting the requirements for continuing education.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 18, 2003.

TRD-200301797
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: April 7, 2003
Proposal publication date: December 20, 2002
For further information, please call: (512) 305-8502

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CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.6

The Texas Optometry Board adopts amendments to §277.6 without change to the proposed text published in the December 20, 2002, issue of the *Texas Register* (27 TexReg 11889).

The amendments set maximum administrative penalties for first time violations of specific sections of the Texas Optometry Act and Rules. The amendments also correct citations to the Act as codified in the Texas Occupations Code.

The Texas Optometry Board (agency) received comments from the National Association of Optometrists and Opticians (association). The association commented that the statutes cited in the rule do not support the amendment of the rule, and that the Texas Optometry Act prohibits a retailer, wholesaler or manufacturer of ophthalmic goods from ". . . exercising undue control over an optometrist's professional judgment or manner of practice." The agency disagrees with this comment. Section 351.408(a) of the Optometry Act actually reads: "[t]his section . . . shall be liberally construed to prevent manufacturers, wholesalers, and retailers of ophthalmic goods from controlling or attempting to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist." The word "undue" is not part of the statute, and nowhere in the statue is the effect of the statute limited to this restriction as proposed by the association. Such a proposed limitation would be directly contradicted by the "liberally construed" pronouncement in subsection (a).

The association also commented that the Optometry Act does not prohibit opticians from making appointments for optometrists, optometrists from sharing appointment information with an optical on the availability of appointments, or opticals from providing "such information" to its customers in response to inquiries about the practice of an optometrist. The agency disagrees with this comment. Section 351.408(b) of the Optometry Act states "[i]n this section, [']control or attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist['] includes: . . . (4) providing, hiring, or sharing employees, business services, or similar items to or with an optometrist or therapeutic optometrist; . . ." This subsection, as well as subsection (a) quoted above, prohibit the activities set out in the proposed language of subsection (d)(2)(A).

The association also commented that the proposed rule would prohibit manufacturers, wholesalers, and retailers of ophthalmic goods from advertising to optometrists the availability of space to lease for professional practice. The agency disagrees with this comment. The proposed amendment is not intended to prohibit such activity, but instead prohibits manufacturers, wholesalers, and retailers of ophthalmic goods from providing or sharing business services with an optometrist.

The association also commented that the proposed rule would prohibit manufacturers, wholesalers, and retailers of ophthalmic goods from advertising to the public that an " . . . optometric practice [is] located adjacent to or near the optical premises."

The agency disagrees with this comment. The proposed amendment is not intended to prohibit the use of a phrase in advertising by manufacturers, wholesalers, and retailers of ophthalmic goods that as a factual matter an independent optometrist is located next to the optical or at another location convenient to the premises of the optical.

The association also commented that the Optometry Act does not prohibit optometrists from voluntarily agreeing to maintain minimum office hours, since such an agreement is ". . . not indicative of undue control or influence." The agency disagrees with this comment. Again, neither the word "undue" or any similar word is contained in §351.408 to limit the scope of the prohibition on controlling or attempting to control an optometrist's manner of practice or practice. The proposed rule language of "[d]irecting or allowing optical employees or owners to set the practice hours . . ." is authorized by the specific language of §351.408(b): "[i]n this section, [']control or attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist['] includes: (1) setting or attempting to influence the professional fees or office hours of an optometrist or therapeutic optometrist . . . ."

No other comments were received regarding the amendments.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.551 and 351.552. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §351.551 and §351.552 as authorizing the imposition of administrative penalties by the Board according to provisions set out in the Act. The only other sections affected by the amendments are §351.351 (address changes); §351.362 (display of name); §351.203 (public interest information); §351.155 and §351.403 (advertising restrictions); §351.404 (offering glasses or contacts as a prize); and §§351.408, 351.459, 351.363 and 351.364 (prohibiting control of optometry by manufacturers, wholesalers, and retailers of ophthalmic goods, and requiring complete separation between dispensing opticians and optometrists).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 18, 2003.

TRD-200301798
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: April 7, 2003
Proposal publication date: December 20, 2002
For further information, please call: (512) 305-8502

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER C. APPLICATION FOR PERMIT

30 TAC §305.48

The Texas Commission on Environmental Quality (commission) adopts the amendment to §305.48 *with change* to the proposed text as published in the December 6, 2002 issue of the *Texas Register* (27 TexReg 11479). The primary purpose of the amendment is to revise the commission rules to incorporate by reference United States Environmental Protection Agency (EPA) regulations relating to cooling water intake structures.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

On September 14, 1998, the State of Texas was authorized by EPA to administer and enforce the National Pollutant Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters of the state under the Federal Water Pollution Control Act, as amended, 33 United States Code, §§1251 *et seq*. (commonly referred to as the Clean Water Act). The approved state program, i.e., the Texas Pollutant Discharge Elimination System (TPDES) program, published September 24, 1998 in the *Federal Register* (63 FR 51164), is administered by the commission. The changes in this chapter, necessitated by EPA changes to its regulations, are part of an effort by the commission to revise several chapters of its rules to maintain equivalency with EPA's regulations and thereby to maintain delegated NPDES permitting authority.

Section 305.48 is amended to correct the name for Standard Industrial Classification (SIC) codes and to require that permit applicants also submit North American Industry Classification System (NAICS) codes.

SECTION DISCUSSION

Subchapter C, Application for Permit.

Section 305.48, Additional Contents of Applications for Wastewater Discharge Permits, is amended to incorporate new requirements in 40 Code of Federal Regulations (CFR) §122.21(r), which requires all owners or operators of new facilities subject to regulations addressing cooling water intake structures to submit three general categories of information when they apply for a TPDES permit. The general categories of information include: 1) physical data to characterize the source water body in the vicinity where the cooling water intake structures are located; 2) data to characterize the design and operation of the cooling water intake structures; and 3) existing data (if available) to characterize the baseline biological condition of the source waterbody. 40 CFR §122.21 is not the exclusive list of information applicants must submit if the new cooling water intake structure rules are applicable. 40 CFR Part 125, Subchapter I, Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, also contains permit application information that must be provided when submitting a TPDES permit application. These requirements are incorporated by reference in 30 TAC §308.91 as a concurrent rulemaking published in this issue of the *Texas Register*.

Section 305.48 is amended to correct the name for SIC codes and to update the rules to require submission of up to four NAICS codes. The previous rule language incorrectly stated that the acronym "SIC" stands for standard industrial codes. Also, a requirement for permit applicants to provide up to four NAICS codes has been added because this system has replaced SIC codes. NAICS is an industry classification system that groups establishments into industries based on the activities in which

they are primarily engaged. However, existing federal rules applicable to wastewater permitting applications and categorical effluent guidelines reference SIC codes. Therefore, the rules are amended to require applicants for a wastewater permit to provide SIC and NAICS code information. It is anticipated that, once SIC codes are phased out and regulations and guidance documents include NAICS code references, the rule may be revised to delete the requirement for submitting SIC codes. A typographical error in a citation in §305.48(b)(2) is also corrected.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as identified in that statute. A major environmental rule means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, or the environment or public health and safety of the state or a sector of the state. The rulemaking will not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendment updates the commission's consolidated permits rules to incorporate certain federal regulations regarding NPDES permitting requirements. The adopted amendment additionally does not require regulatory analysis under Texas Government Code, §2001.0225 because §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted amendment does not introduce additional regulatory requirements that are not currently enforced by the EPA. Therefore, the commission concludes that a regulatory analysis is not required in this instance because the rule does not meet any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of these rules in accordance with Texas Government Code, §2007.043. The specific purpose of the adopted rulemaking is to ensure that the commission's consolidated permits requirements are equivalent to EPA's NPDES permitting regulations. The rule will substantially advance this stated purpose by adopting language intended to ensure that state rules are equivalent to the corresponding federal regulations. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to this rulemaking because this is an action that does not adversely affect real property and also is within the exceptions of Chapter 2007 because it is reasonably taken to fulfill an obligation mandated by federal law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that it is subject to Coastal Coordination Act Implementation Rules under 31 TAC §505.11(b)(4) because it involves a rule governing a specifically listed individual commission action (issuance or approval) that may affect a coastal natural resource area. Therefore, the rulemaking must be consistent with applicable goals and policies of the Texas Coastal Management Program (CMP).

The commission prepared a consistency determination for the rules under 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies. CMP goals applicable to the amendment include 31 TAC §501.12(5), concerning balance of the benefits from economic development and multiple human uses of the coastal zone and benefits from protecting, preserving, restoring, and enhancing coastal natural resource areas; §501.14(a)(1)(B), concerning electric generating facilities using once-through cooling systems to be located and designed to have the least adverse effects practicable, including impingement or entrainment of estuarine organisms; and §501.14(r)(1)A)(vi), concerning commission administration of the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state. The rulemaking incorporates by reference federal requirements to prevent the entrainment of aquatic or marine organisms with cooling water at new facilities that uptake at least two million gallons per day of water (with at least 25% of the total water used for cooling purposes). The rulemaking applies statewide, including the coastal areas.

PUBLIC COMMENT

The public comment period ended on January 6, 2003. No comments were received during the comment period.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

§305.48. Additional Contents of Applications for Wastewater Discharge Permits.

(a) The following shall be included in an application for a wastewater discharge permit.

(1) The original and one copy of the permit application shall be submitted on forms provided by or approved by the executive director, and shall be accompanied by a like number of copies of all technical supplements and attachments.

(2) If the application is for the disposal of any waste into or adjacent to a watercourse, the application shall show the ownership of the tracts of land adjacent to the treatment facility and for a reasonable distance along the watercourse from the proposed point of discharge. The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls or other reliable sources. The application shall state the source of the information. This subsection does not apply to:

(A) an application to renew a permit; and

(B) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment).

(3) The applicant shall submit any other information reasonably required by the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and federal statutes, including, but not limited to, the following:

(A) the operator's name, address, and telephone number;

(B) whether the facility is located on Indian lands;

(C) up to four Standard Industrial Classification (SIC) codes and North American Industry Classification System (NAICS) codes which best reflect the principal products or services provided by the facility.

(b) The following regulations contained in 40 Code of Federal Regulations, Part 122, which are in effect as of the date of TPDES program authorization, as amended, are incorporated by reference.

(1) Subpart B - Permit Applications and Special NPDES Program Requirements, §122.21(g), providing application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.

(2) Subpart B - Permit Applications and Special NPDES Program Requirements, §122.21(h), providing application requirements for manufacturing, commercial, mining, and silvicultural facilities which discharge only nonprocess wastewater, except 40 Code of Federal Regulations §122.21(h)(4)(iii), the requirements of which are addressed in §305.126(e) of this title (relating to Additional Standard Permit Conditions for Waste Discharge Permits).

(3) Subpart B - Permit Applications and Special NPDES Program Requirements, §122.21(i), providing application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities.

(4) Subpart B - Permit Applications and Special NPDES Program Requirements, §122.21(r), providing application requirements for new facilities with new or modified cooling water intake structures.

(c) In addition to the information required by §305.45 of this title (relating to Contents of Application for Permit), an application by an individual for a waste discharge permit shall contain:

(1) the individual's full legal name and date of birth;

(2) the street address of the individual's place of residence;

(3) the identifying number from the individual's driver's license or personal identification certificate issued by the state or country in which the individual resides;

(4) the individual's sex; and

(5) any assumed business or professional name of the individual filed under Business and Commerce Code, Chapter 36.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 21, 2003.

TRD-200301878

Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: April 10, 2003
Proposal publication date: December 6, 2002
For further information, please call: (512) 239-0348

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CHAPTER 308. CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SUBCHAPTER I. CRITERIA APPLICABLE TO COOLING WATER INTAKE STRUCTURES UNDER CLEAN WATER ACT, §316(b)

30 TAC §308.91

The Texas Commission on Environmental Quality (commission) adopts new §308.91 *with change* to the proposed text as published in the December 6, 2002 issue of the *Texas Register* (27 TexReg 11482). The primary purpose of the new section is to incorporate by reference United States Environmental Protection Agency (EPA) regulations relating to cooling water intake structures in the commission rule which corresponds to those federal regulations.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

On September 14, 1998, the State of Texas was authorized by EPA to administer and enforce the National Pollutant Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters of the state under the Federal Water Pollution Control Act, as amended, 33 United States Code, §§1251 *et seq*. (commonly referred to as the Clean Water Act). The approved state program, i.e., the Texas Pollutant Discharge Elimination System (TPDES) program, published September 24, 1998 in the *Federal Register* (63 FR 51164), is administered by the commission. The changes in this chapter, necessitated by EPA changes to federal regulations, are part of an effort by the commission to revise several chapters of its rules to maintain equivalency with EPA's regulations and thereby to maintain delegated NPDES permitting authority.

SECTION DISCUSSION

New §308.91, Criteria Applicable to Cooling Water Intake Structures under the Clean Water Act, §316(b), incorporates language contained in 40 Code of Federal Regulations (CFR) §§125.80 - 125.89. The EPA rule implemented the Clean Water Act, §316(b) for new facilities that use water withdrawn from rivers, streams, lakes, reservoirs, estuaries, oceans, or other waters of the United States for cooling purposes. The national requirements establish the best technology available, based on a two-track approach, for minimizing adverse environmental impact associated with the use of these structures. Track I establishes national velocity intake capacity and velocity requirements based on size, as well as location- and capacity-based requirements to reduce intake flow below certain proportions of certain waterbodies. For fresh water rivers and streams, intake flow must be less than or equal to 5% of the mean annual flow; for lakes and reservoirs, intake flow may not disrupt natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management

of fisheries for fish and shellfish by any fishery management agency; for estuaries or tidal rivers, intake flow must be less than or equal to 1% of the tidal excursion volume; for oceans, there are no proportional flow requirements. Track I also requires the permit applicant to select and implement design and construction technologies under certain conditions to minimize impingement mortality and entrainment. Track II allows permit applicants to conduct site-specific studies to demonstrate to the commission that alternatives to the Track I requirements will reduce impingement mortality and entrainment for all life stages of fish and shellfish to a level of reduction comparable to the level the facility would achieve at the cooling water intake structure if it met the Track I requirements.

This rule applies to new greenfield facilities and stand-alone facilities that use cooling water intake structures to withdraw water from waters of the United States and that have or require a TPDES permit issued under the Clean Water Act, §402. Greenfield facilities are facilities that are constructed at a site at which no other source is located, or that totally replace the process or production equipment at an existing facility (see 40 CFR §122.29(b)(1)(i)). Stand-alone facilities are new, separate facilities that are constructed on property where an existing facility is located and with processes that are substantially independent of the existing facility at the same site (see 40 CFR §122.29(b)(1)(iii)). New facilities subject to this regulation include those that have a design intake flow of greater than two million gallons per day and that use at least 25% of the withdrawn water for cooling purposes. Specifically, the new rule applies to owners or operators of any facility that meets all of the following: the greenfield or stand-alone facility meets the definition of a new facility specified in 40 CFR §125.83; the new facility uses a newly constructed or modified existing intake structure or structures, or the facility obtains cooling water by any sort of contract or arrangement with an independent supplier that has a cooling water intake structure; the new facility's cooling water intake structure(s) withdraw(s) water from waters of the United States and at least 25% of the water withdrawn is used for contact or non-contact cooling purposes; the new facility has a design flow of greater than two million gallons per day; the new facility has an NPDES permit or is required to obtain one. Use of cooling water does not include obtaining cooling water from a public water system or the use of treated effluent that otherwise would be discharged to a water of the United States. This provision is intended to prevent circumvention of these requirements by creating arrangements to receive cooling water from an entity that is not itself a point source. Changes to a cooling water intake structure are considered modifications for purposes of the rule only if such changes result in an increase in design capacity. Generally, facilities that meet these criteria fall into two major groups: new steam electric generating facilities and new manufacturing facilities. The rule does not apply to existing facilities including major modifications to existing facilities that may be "new sources" in 40 CFR §122.29 as that term is used in the EPA's effluent guidelines and standards program.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as set out in that statute. A major environmental rule means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, or the environment or public health and safety of the state or a sector of the state. The adoption will not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The new section additionally does not require regulatory analysis under Texas Government Code, §2001.0225 because §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The new section does not introduce additional regulatory requirements that are not currently enforced by the EPA or the commission. Therefore, the commission concludes that a regulatory analysis is not required in this instance because the adopted rule does not meet any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of the adopted rule in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to ensure that the commission's requirements for permits are equivalent to EPA's NPDES permitting regulations. The rule will substantially advance this stated purpose by adopting language intended to ensure that state rules are equivalent to the corresponding federal regulations. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because this is an action that does not adversely affect real property and also is within the exceptions of Chapter 2007 because it is reasonably taken to fulfill an obligation mandated by federal law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is rulemaking subject to Coastal Coordination Act Implementation Rules under 31 TAC §505.11(b)(4) because it involves a rule governing a specifically listed individual commission action (issuance or approval) that may affect a coastal natural resource area. Therefore, the rulemaking must be consistent with applicable goals and policies of the Texas Coastal Management Program (CMP).

The commission prepared a consistency determination for the rules under 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies. CMP goals applicable to the adopted rule include 31 TAC §501.12(5), concerning balance of the benefits from economic development and multiple human uses of the coastal zone and benefits from protecting, preserving, restoring, and enhancing coastal natural resource areas; §501.14(a)(1)(B), concerning electric generating facilities using once-through cooling systems to be located and designed to have the least adverse effects practicable, including impingement or entrainment of estuarine organisms; and §501.14(r)(1)(A)(vi), concerning commission administration of the law so as to promote the judicious use

and maximum conservation and protection of the quality of the environment and the natural resources of the state. The rulemaking incorporates by reference federal requirements to prevent the entrainment of aquatic or marine organisms with cooling water at new facilities that uptake at least two million gallons per day of water (with at least 25% of the total water used for cooling purposes). The rulemaking applies statewide, including the coastal areas.

PUBLIC COMMENT

The public comment period ended on January 6, 2003. No comments were received during the comment period.

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code (TWC), §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

§308.91. Criteria Applicable to Cooling Water Intake Structures under the Clean Water Act, §316(b).

The following regulations contained in 40 Code of Federal Regulations (CFR) Part 125, as amended, are incorporated by reference.

(1) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.80, What are the purposes and scope of this subpart?

(2) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.81, Who is subject to this subpart?

(3) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.82, When must I comply with this subpart?

(4) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.83, What special definitions apply to this subpart?

(5) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.84, As an owner or operator of a new facility, what must I do to comply with this subpart?

(6) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.85, May alternative requirements be authorized?

(7) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.86, As an owner or operator of a new facility, what must I collect and submit when I apply for my new or reissued NPDES permit?

(8) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.87, As an owner or operator of a new facility, must I perform monitoring?

(9) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.88, As an owner or operator of a new facility, must I keep records and report?

(10) Subpart I - Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Act, §125.89, As the Director, what must I do to comply with the requirements of this subpart?

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 21, 2003.

TRD-200301879
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: April 10, 2003
Proposal publication date: December 6, 2002
For further information, please call: (512) 239-0348

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

The Texas Juvenile Probation Commission adopts the repeal of Chapter 341, §§341.1-341.6, 341.13-341.17, 341.24-341.31, 341.38-341.42, 341.48- 341.53, 341.58-341.62, 341.68, 341.75, 341.82-341.92, 341.98-341.109, 341.113, 341.114, 341.121-341.125, 341.132-341.143, 341.150, 341.157, and 341.158, relating to standards for juvenile probation departments without changes as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1073) and will not be republished.

TJPC adopts this repeal in an effort not to overlap with new standards, which provide structural and substantive changes from the current standards that will become effective September 1, 2003.

No public comment was received regarding adoption of the repeals.

SUBCHAPTER A. DEFINITIONS

37 TAC §341.1

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301898

Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 424-6710

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SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §§341.2 - 341.6

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301899
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 424-6710

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SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §§341.13 - 341.17

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301900
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 424-6710

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SUBCHAPTER D. FISCAL OFFICER RESPONSIBILITIES

37 TAC §§341.24 - 341.31

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200301901
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER E. EMPLOYMENT OF JUVENILE PROBATION OFFICERS

37 TAC §§341.38 - 341.42

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200301902
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER F. CERTIFICATION OF JUVENILE PROBATION OFFICERS

37 TAC §§341.48 - 341.53

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200301903

Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER G. TRAINING OF JUVENILE PROBATION OFFICERS

37 TAC §§341.58 - 341.62

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200301904
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER H. DUTIES OF CERTIFIED JUVENILE PROBATION OFFICERS

37 TAC §341.68

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER I. JUVENILE PROBATION OFFICER CODE OF ETHICS

37 TAC §341.75

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa A. Capers
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Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER J. ENFORCEMENT PROCEDURES--CODE OF ETHICS

37 TAC §§341.82 - 341.92

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER K. MANDATORY CERTIFICATION REVOCATION AND MANDATORY CERTIFICATION SUSPENSION

37 TAC §§341.98 - 341.109

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200301908

Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER L. COMPLAINTS AGAINST JUVENILE BOARDS

37 TAC §341.113, §341.114

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa A. Capers
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Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER M. CASE MANAGEMENT STANDARDS

37 TAC §§341.121 - 341.125

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa A. Capers
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Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER N. DATA COLLECTION STANDARDS

DIVISION 1. CASEWORKER SYSTEMS

37 TAC §§341.132 - 341.137

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa A. Capers
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For further information, please call: (512) 424-6710

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DIVISION 2. NON-CASEWORKER SYSTEMS

37 TAC §§341.138 - 341.143

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa A. Capers
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Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER O. ELECTRONIC DATA INTERCHANGE SPECIFICATIONS

37 TAC §341.150

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200301913

Lisa A. Capers
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Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER P. TEXAS JUVENILE PROBATION COMMISSION

37 TAC §341.157, §341.158

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200301914
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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CHAPTER 342. STANDARDS FOR HOUSING NON-TEXAS JUVENILES IN TEXAS CORRECTIONAL FACILITIES

37 TAC §§342.1 - 342.5

The Texas Juvenile Probation Commission adopts the repeal of Chapter 342, §§342.1-342.5, relating to standards for housing out-of-state juveniles as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1088) and will not be republished.

TJPC adopts this repeal in an effort not to overlap with new standards, which provide structural and substantive changes from the current standards that will become effective September 1, 2003.

No public comment was received.

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200301915
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 424-6710

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CHAPTER 343. STANDARDS FOR JUVENILE PRE-ADJUDICATION SECURE DETENTION FACILITIES

The Texas Juvenile Probation Commission adopts the repeal of Chapter 343, §§343.1-343.18, 343.25, 343.30-343.35, 343.40-343.44, 343.50-343.53, relating to standards for juvenile pre-adjudication secure detention facilities as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1090) and will not be republished.

TJPC adopts this repeal in an effort not to overlap with new standards, which provide structural and substantive changes from the current standards that will become effective September 1, 2003.

No public comment was received.

SUBCHAPTER A. DEFINITIONS

37 TAC §343.1

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301916
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 424-6710

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SUBCHAPTER B. FACILITY STANDARDS

37 TAC §§343.2 - 343.18

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301917

Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 424-6710

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SUBCHAPTER C. HIRING JUVENILE DETENTION OFFICERS

37 TAC §343.25

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301918
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 424-6710

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SUBCHAPTER D. JUVENILE DETENTION OFFICER CERTIFICATION

37 TAC §§343.30 - 343.35

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301919
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 424-6710

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SUBCHAPTER E. TRAINING

37 TAC §§343.40 - 343.44

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301920
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 424-6710

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SUBCHAPTER F. CODE OF ETHICS AND ENFORCEMENT PROCEEDINGS

37 TAC §§343.50 - 343.53

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2003.

TRD-200301921
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 424-6710

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CHAPTER 344. STANDARDS FOR JUVENILE POST-ADJUDICATION SECURE CORRECTIONAL FACILITIES

The Texas Juvenile Probation Commission adopts the repeal of Chapter 344, §§344.1 - 344.17, 344.25, 344.30 - 344.35, 344.40 - 344.44, 344.50 - 344.53, relating to standards for Juvenile Post-Adjudication Secure Correctional Facilities as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1111) and will not be republished.

TJPC adopts the repeal in an effort not to overlap with new standards, which provide structural and substantive changes from the current standards that will become effective September 1, 2003.

No public comment was received regarding the repeal.

SUBCHAPTER A. DEFINITIONS

37 TAC §344.1

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER B. FACILITY STANDARDS

37 TAC §§344.2 - 344.17

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. HIRING JUVENILE CORRECTIONS OFFICERS

37 TAC §344.25

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. JUVENILE CORRECTIONS OFFICER CERTIFICATION

37 TAC §§344.30 - 344.35

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. TRAINING

37 TAC §§344.40 - 344.44

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

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SUBCHAPTER F. CODE OF ETHICS AND ENFORCEMENT PROCEEDINGS

37 TAC §§344.50 - 344.53

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 345. COMMUNITY CORRECTIONS ASSISTANCE PROGRAM

37 TAC §345.1, §345.2

The Texas Juvenile Probation Commission adopts the repeal of Chapter 345, §345.1 and §345.2, relating to standards for Community Corrections Assistance Program and Post-Adjudication Secure Facilities as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1113) and will not be republished.

TJPC adopts the repeal in an effort not to overlap with new standards, which provide structural and substantive changes from the current standards that will become effective September 1, 2003.

No public comment was received regarding the repeal.

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 347. TITLE IV-E FEDERAL FOSTER CARE PROGRAM

37 TAC §§347.1, 347.3, 347.5, 347.7, 347.9, 347.11, 347.13, 347.15, 347.17, 347.19, 347.21

The Texas Juvenile Probation Commission adopts the repeal of Chapter 347, §§347.1, 347.3, 347.5, 347.7, 347.9, 347.11, 347.13, 347.15, 347.17, 347.19, and 347.21, relating to standards for Title IV-E Federal Foster Care Programs as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1114) and will not be republished.

TJPC adopts the repeal in an effort not to overlap with new standards, which provide structural and substantive changes from the current standards that will become effective September 1, 2003.

No public comment was received regarding the repeal.

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 348. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS

The Texas Juvenile Probation Commission adopts the repeal of Chapter 348, §§348.101 - 348.112 and §§348.501 - 348.504, relating to standards for Juvenile Justice Alternative Education Programs as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1125) and will not be republished.

TJPC adopts the repeal in an effort not to overlap with new standards, which provide structural and substantive changes from the current standards that will become effective September 1, 2003.

No public comment was received regarding the repeal.

SUBCHAPTER A. PROGRAM OPERATIONS

37 TAC §§348.101- 348.112

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. ACCOUNTABILITY

37 TAC §§348.501 - 348.504

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 349. STANDARDS FOR CHILD ABUSE AND NEGLECT INVESTIGATIONS IN SECURE JUVENILE FACILITIES

The Texas Juvenile Probation Commission adopts the repeal of Chapter 349, §§349.101 - 349.119 and §§349.501 - 349.508, relating to standards for child abuse and neglect investigations in secure juvenile facilities as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1141) and will not be republished.

TJPC adopts the repeal in an effort not to overlap with new standards, which provide structural and substantive changes from the current standards that will become effective September 1, 2003.

No public comment was received regarding the repeal.

SUBCHAPTER A. INTAKE, INVESTIGATION, AND ASSESSMENT

37 TAC §§349.101 - 349.119

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. CONFIDENTIALITY AND RELEASE OF RECORDS

37 TAC §§349.501 - 349.508

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 351. STANDARDS FOR HOLD-OVER DETENTION FACILITIES

The Texas Juvenile Probation Commission adopts the repeal of Chapter 351, §§351.1 - 351.16 and §§351.20 - 351.23, relating to standards for short-term detention facilities as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1141) and will not be republished.

TJPC adopts this repeal in an effort not to overlap with new standards, which provide structural and substantive changes from the current standards that will become effective September 1, 2003.

No public comment was received regarding the repeal.

SUBCHAPTER A. DEFINITIONS

37 TAC §351.1

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. HOLD-OVER DETENTION FACILITY STANDARDS

37 TAC §§351.2 - 351.16

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. HIRING, CERTIFICATION AND RECERTIFICATION OF JUVENILE DETENTION OFFICERS

37 TAC §§351.20 - 351.23

The repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

The Texas Juvenile Probation Commission adopts new Chapter 341 relating to Texas Juvenile Probation Commission standards. Section 341.15 is being adopted with non-substantive changes to the text as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1078). Sections 341.1-341.4, 341.9-341.10, 341.16, 341.20-341.23, 341.28-341.30, 341.35-341.41, 341.47-341.56, 341.60, and 341.65-341.71 are adopted without changes as published and will not be republished.

TJPC adopts this rule in an effort to provide structural and substantive changes from the current standards.

No public comment was received.

SUBCHAPTER A. DEFINITIONS

37 TAC §341.1

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §§341.2 - 341.4

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §341.9, §341.10

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. TREATMENT AND SAFETY

37 TAC §341.15, §341.16

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.15. Treatment and Safety.

(a) Serious Incidents. The chief administrative officer or his/her designee shall report to the Commission within 24 hours the escape, death, attempted suicide, and any serious injury, including youth on youth assaults, that require medical treatment by a physician or physician's assistant, that occurs in a juvenile justice program or juvenile probation department.

(b) Abuse, Exploitation and Neglect.

(1) Any employee, volunteer or intern of a juvenile probation department or juvenile justice program shall report to the Commission and local law enforcement any allegation of abuse, exploitation or neglect of a juvenile that occurs in or involves an employee, volunteer or intern of a juvenile justice program, juvenile probation department, pre-adjudication secure detention facility, short-term juvenile detention facility, post-adjudication secure correctional facility, or juvenile justice alternative education program.

(2) Any allegation of abuse, exploitation or neglect involving a juvenile under the jurisdiction of the juvenile court that is not alleged to have occurred in a juvenile justice program or facility under the jurisdiction of the juvenile board shall be reported as required in Texas Family Code §261.101.

(3) A report of the alleged abuse, exploitation or neglect under subsection (1)(A) of this section shall be made within 24 hours from the time the allegation is made.

(c) Internal Investigation.

(1) An internal investigation shall be conducted for all allegations of abuse, exploitation or neglect in the juvenile probation department or any juvenile justice program.

(2) All employees, volunteers and interns shall fully cooperate with any investigation of alleged abuse, exploitation or neglect.

(3) Until the conclusion of the internal investigation, any person alleged to be a perpetrator of abuse, exploitation or neglect shall be placed on administrative leave or reassigned to a position having no contact with the alleged victim's family, and individuals under supervision by the juvenile probation department, participating in a juvenile justice program or under the jurisdiction of the juvenile court.

(4) At the conclusion of the internal investigation, the chief administrative officer shall take appropriate measures to provide for the safety of the juveniles.

(5) The chief administrative officer or his/her designee shall submit a copy of the internal investigation to the Commission within five calendar days following the completion of the internal investigation.

(d) In the event the chief administrative officer is alleged to be a perpetrator of abuse, exploitation or neglect, the juvenile board shall:

(1) conduct the internal investigation or appoint an individual who is not an employee of the juvenile probation department to conduct the internal investigation;

(2) until the conclusion of the internal investigation place the chief administrative officer on administrative leave, or ensure the chief administrative officer has no contact with the alleged victim's family and individuals under supervision by the juvenile probation department, participating in a juvenile justice program or under the jurisdiction of the juvenile court; and

(3) submit a copy of the internal investigation to the Commission within five calendar days following the completion of the internal investigation.

(e) The chief administrative officer shall ensure that juveniles under supervision of the juvenile probation department or participating in a juvenile justice program shall not be subjected to abuse, exploitation or neglect as defined in Chapter 261, Texas Family Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. EMPLOYMENT OF CERTIFIED JUVENILE PROBATION OFFICERS

37 TAC §341.20 - 341.23

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. REQUIREMENTS FOR JUVENILE PROBATION OFFICERS

37 TAC §§341.28 - 341.30

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. CASE MANAGEMENT STANDARDS

37 TAC §§341.35 - 341.41

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. DATA COLLECTION STANDARDS

DIVISION 1. CASEWORKER SYSTEMS

37 TAC §§341.47 - 341.51

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 2. NON-CASEWORKER SYSTEMS

37 TAC §§341.52 - 341.56

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. ELECTRONIC DATA INTERCHANGE SPECIFICATIONS

37 TAC §341.60

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. RESTRAINTS

37 TAC §§341.65 - 341.71

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 342. STANDARDS FOR HOUSING NON-TEXAS JUVENILES IN TEXAS DETENTION AND CORRECTIONAL FACILITIES

37 TAC §§342.1 - 342.3

The Texas Juvenile Probation Commission adopts new Chapter 342, §§342.1-342.3, relating to standards for housing out-of-state juveniles. This chapter is adopted without changes as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1089) and will not be republished.

TJPC adopts this rule in an effort to provide structural and substantive changes from the current standards.

No public comment was received.

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 343. STANDARDS FOR SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES

The Texas Juvenile Probation Commission adopts new Chapter 343, §§343.1-343.17, 343.30-343.37, 343.45-343.52, and 343.60-343.68, relating to standards for juvenile pre-adjudication and post-adjudication secure facilities. Sections 343.1, 343.5, 343.7, 343.10, 343.30, 343.37, 343.52, and 343.66 are adopted with changes to the proposed text as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1092). Sections 343.2-343.4, 343.6, 343.8, 343.9, 343.11-343.17, 343.31-343.36 343.45-343.51, 343.60-343.65, 343.67, and 343.68 are adopted without changes and will not be republished.

TJPC adopts this rule in an effort to provide structural and substantive changes from the current standards.

No public comment was received regarding adoption of the new sections.

SUBCHAPTER A. DEFINITIONS

37 TAC §343.1

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

§343.1. Definitions.

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

(1) Alleged Victim--A juvenile alleged as being a victim of abuse, exploitation or neglect.

(2) Attempted Suicide--Any action a resident takes that could result in taking his or her own life voluntarily and intentionally while detained or placed in a secure facility.

(3) Chemical Agents--Oleorsin Capsicum (OC) pepper spray, or Orthochlorobenzalmalonoitrile (tear gas).

(4) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department or a multi-county juvenile judicial district.

(5) Commission--The Texas Juvenile Probation Commission.

(6) Common Activity Area--Area inside the facility to which residents have access and in which activities are conducted. This area includes but is not limited to dayrooms, covered recreation areas, recreation rooms, education rooms, counseling rooms, testing rooms, visitation areas, and medical or dental rooms.

(7) Contraband--Any item not issued to employees for the performance of their duties and which employees have not obtained supervisory approval to possess. Contraband also includes any item given to a resident by an employee or other individual, which a resident is not authorized to possess or use. Specific items of contraband include, but are not limited to:

(A) firearms;

(B) knives;

(C) ammunition;

(D) drugs;

(E) intoxicants;

(F) pornography; and

(G) any unauthorized written or verbal communication brought into or taken from an institution for a resident, former resident, associate of or family members of a resident.

(8) Design Capacity--The number of people that can safely occupy a building or space as determined by the original architectural design and any building modifications, licensing, accreditation, regulatory authorities, and building codes.

(9) Detention--The temporary secure custody of a juvenile, or other individual pending juvenile court disposition or transfer to another jurisdiction or agency.

(10) Facility Administrator--Individual designated by the policy board of a private secure facility, or by the Chief Administrative Officer or juvenile board, as the on-site program director or superintendent of a secure facility.

(11) Juvenile Detention Officer--A person whose primary responsibility is the supervision of the daily activities of residents in a secure facility. This may include the facility administrator, assistant facility administrator or a supervisor of juvenile detention officers. Other administrative, food services, janitorial, and auxiliary staff are not considered to be detention officers.

(12) Military Style Program--A post-adjudication secure correctional facility that features military-style discipline and structure as an integral part of its treatment and rehabilitation program.

(13) Multiple Occupancy Housing Unit--A unit designed and constructed for multiple occupancy sleeping which is self-contained and includes appropriate sleeping, sanitation and hygiene equipment or fixtures.

(14) Non-Program Hours--Time period when all scheduled resident activity for the entire resident population has ceased for the day.

(15) Physical Training Program--Any program that requires participants to engage in and perform structured physical training and activity. This does not include recreational team activities.

(16) Post-Adjudication Secure Correctional Facility ("Facility" or "Secure Facility")--A public secure facility administered by a juvenile board or a privately operated facility certified by the juvenile board that includes construction and fixtures designed to physically restrict the movements and activities of the residents, and is intended for the treatment and rehabilitation of youth who have been adjudicated. Subchapters A, B, D and E of this title apply to all post-adjudication secure correctional facilities. A Post-Adjudication Secure Correctional Facility does not include any non-secure residential program operating under the authority of a juvenile board.

(17) Pre-Adjudication Secure Detention Facility ("Facility" or "Secure Facility")--A public secure facility administered by a juvenile board or a privately operated facility certified by the juvenile board that includes construction and fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility and is used for the temporary placement of any juvenile or other individual who is accused of having committed an offense and is awaiting court action, an administrative hearing, or other transfer action. Subchapters A, B, C and E of this title apply to all pre-adjudication secure detention facilities. A secure detention facility does not include a short-term detention facility as defined by Texas Family Code §51.12(j).

(18) Primary Control Room--A restricted or secure area from which entrance into and exit from a secure facility is controlled. The primary control room also contains the emergency, monitoring, and communications systems and is staffed 24 hours each day that residents are in the facility.

(19) Professionals--The following persons are considered professionals:

(A) teachers certified as educators by the State Board for Education Certification including teachers certified by the State Board for Education Certification with provisional or emergency certifications;

(B) educational aides or paraprofessionals certified by the State Board for Education Certification;

(C) health care professionals licensed or certified by:

(i) the Texas Board of Nurse Examiners;

(ii) the Texas Board of Medical Examiners;

(iii) the State Board of Physician Assistants; or

(iv) the Texas Department of Health;

(D) mental health professionals licensed or certified by:

(i) the Texas State Board of Examiners of Psychologists;

(ii) the Texas State Board of Examiners of Professional Counselors;

(iii) the Texas State Board of Examiners of Marriage and Family Therapists;

(iv) the Texas Department of Health;

(v) the Texas Commission on Alcohol and Drug Abuse;

(vi) the Texas State Board of Medical Examiners; or

(vii) the Texas Board of Social Worker Examiners provided the licensure is either as an advanced practitioner or advanced clinical practitioner.

(E) mental health professionals employed by the Texas Department of Mental Health and Mental Retardation or an entity that contracts as a service provider with the Texas Department of Mental Health and Mental Retardation.

(F) social workers licensed by the Texas Board of Social Worker Examiners;

(G) juvenile probation officers certified by the Texas Juvenile Probation Commission; and

(H) commissioned law enforcement personnel.

(20) Program Hours--Time period of no less than 10 hours when the resident population has scheduled activities and any shift changes that occur during the time period when the resident population has scheduled activities.

(21) Resident--A juvenile or other individual that has been admitted into or court-ordered to reside in a secure facility.

(22) Single Occupancy Housing Units--Units designed and constructed with separate and secure, individual resident sleeping quarters.

(23) TJPC Standard Screening Tool--An instrument approved by the Commission that screens the juvenile's needs in the area of mental health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS

37 TAC §§343.2 - 343.17

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

§343.5. Physical Plant.

(a) Location.

(1) If the facility is located in the same building or on the grounds of any type of adult corrections facility, it shall be a separate, self-contained unit.

(2) All applicable federal and state laws pertaining to the separation of juveniles from adult inmates shall apply.

(b) Separate Operations.

(1) All pre-adjudication programs shall be operated separately from any post-adjudication programs.

(2) Where a pre-adjudication program and a post-adjudication program are located in the same building or on the same grounds, contact between the two populations shall be kept to a minimum.

(c) Exits. Facility exits shall be clear of obstruction, and properly marked for evacuation in the event of fire or other emergency.

(d) Storage. Storage of cleaning supplies and equipment shall not be accessible to residents.

(e) Fire Safety Plan. The facility shall adopt a fire safety plan.

(1) The fire safety plan shall:

(A) be approved in writing by the governmental fire authority having primary jurisdiction of the facility; and

(B) designate a facility staff person as the fire safety officer.

(2) The facility fire safety officer's duties shall include insuring the following:

(A) maintenance of a current fire drill log;

(B) proper disposal of combustible refuse;

(C) a posted plan for prompt evacuation of the facility;

(D) quarterly fire drills on all shifts; and

(E) procedures for the use and control of flammable, toxic, and caustic materials.

(f) Safety Codes. The facility shall conform to the provisions set forth in the Life Safety Code, National Fire Protection Association (NFPA), 101 and/or any applicable state and local fire safety codes. The Life Safety Code may be substituted with local government ordinances/codes only if said ordinances/codes are specifically written to include building occupancy for detention and correctional usage.

(1) A formalized facility Life Safety Code Inspection/fire safety inspection shall be completed prior to the facility becoming operational.

(2) All subsequent facility Life Inspection Safety Code/fire safety inspection shall be conducted at least annually.

(3) All inspection reports shall be reduced to written documentation which shall include:

(A) an enumeration of the specific code(s) used during the inspection;

(B) any corrective action required;

(C) the name and title of person conducting the inspection; and

(D) the date(s) of the inspection.

(g) Population. The population of the facility shall not exceed the design capacity of the facility.

(h) Lighting. There shall be lighting available for the residents.

(i) Natural Lighting. All housing areas located in facilities designed and constructed or placed into operation on or after the effective date of this standard shall provide natural light available from a source within 20 feet of the area.

(j) Facility design. All housing areas shall provide for the following:

(1) an operable shower or bath with hot and cold running water for at least every ten residents;

(2) fully functioning:

(A) heating systems;

(B) ventilation systems; and

(C) cooling systems;

(3) access to a drinking fountain;

(4) toilets shall be provided at a minimum ratio of one for every 12 juveniles in male facilities, and one for every eight juveniles in female facilities. For facilities constructed after March 1, 1996, the ratio shall be one toilet for every six juveniles.

(A) urinals may be substituted for up to one-half of the toilets in all male facilities;

(B) all housing units with five or more juveniles shall have a minimum of two toilets; and

(5) access to a washbasin with hot and cold running water.

(k) Confinement Rooms. Any room utilized for the confinement of residents from the general population under the provisions of these standards shall be equipped with:

(1) a toilet;

(2) a washbasin with running water; and

(3) a mattress.

(l) Disabled Residents. Rooms or housing units used by disabled residents shall be designed for their use and provide for their safety and security in accordance with state and federal law.

(m) Program and Services Areas. The facility shall be designed to provide space for:

(1) a room or area for visitation;

(2) religious activities;

(3) interviewing and counseling; and

(4) educational instruction.

(n) Personal Property. Space shall be provided for secure storage of the resident's personal property.

(o) Housing Units. The secure facility shall be constructed with housing units of no more than 24 residents each.

(p) Dining Area. The dining area shall provide a minimum of 15 square feet of floor space per diner.

(q) Alternate Power Source. In the event that regular power is interrupted, the facility shall have an alternate source of power to operate:

(1) lights;

(2) communications systems;

(3) fire detection and alarm systems; and

(4) electric door locks.

(r) Preventive Maintenance.

(1) Power systems shall be tested at least every two weeks, the results documented and any deficiencies corrected.

(2) All emergency equipment and systems shall be tested at least monthly, the results documented and any deficiencies corrected.

(s) Ventilation. Alternate means of ventilation shall be maintained in case regular power is interrupted.

(t) Access for Individuals with Disabilities. All parts of the facility that are accessible to the public shall be accessible to and usable by staff and visitors with physical disabilities in accordance with state and federal law.

(u) Secure Storage. There shall be a location for secure storage of restraining devices, and related security equipment. This equipment shall be readily accessible to authorized persons.

§343.7. Rules and Discipline.

(a) Prohibited Sanctions. The following sanctions shall be prohibited:

(1) corporal punishment;

(2) humiliating punishment;

(3) one resident sanctioning another;

(4) group punishment for the acts of an individual;

(5) deprivation of food;

(6) deprivation of clothing;

(7) deprivation of sleep;

(8) deprivation of medical services; and

(9) physical exercises used for compliance, intimidations, or with the exception of post-adjudication military style programs, discipline.

(b) Enforcement. Rule violations and corresponding staff actions shall be recorded in the resident's record.

(c) Law Violations. When a resident is alleged to have committed a felony or a class A or B misdemeanor while in the facility, the case shall be referred to a law enforcement agency for possible investigation and/or prosecution.

(d) Separation from the Group.

(1) Room Restriction.

(A) Room restriction may be used in increments of up to 60 minutes for behavior modification.

(B) During room restriction, a juvenile detention officer shall personally observe and record the resident's behavior in staggered intervals not to exceed 15 minutes.

(2) Room Confinement.

(A) Room confinement may be used when a resident is out of control, repeatedly refuses to comply with rules, or is a threat to himself or others.

(B) Room confinement may be utilized by a juvenile detention officer for up to 24 hours.

(C) The juvenile detention officer shall complete a disciplinary report for submission to the facility administrator or designee that describes the circumstances and the staff action taken in response to the violation.

(D) Confinement beyond 24 hours shall be approved in writing by the facility administrator or designee, and reauthorized in writing by the facility administrator or designee, if necessary, every 24 hours.

(E) During room confinement, a juvenile detention officer shall personally observe and record the resident's behavior in staggered intervals not to exceed 15 minutes.

§343.10. Health Care Services.

(a) Health Service Authority. The facility administrator shall designate a health service authority responsible for health care decisions within the facility. The health service authority shall be a physician, registered nurse, or physician's assistant.

(b) Health Service Coordinator.

(1) The facility administrator or designee shall designate a staff member to coordinate health care delivery in the facility.

(2) The health service coordinator shall receive special training in health care and be familiar with local health care providers and facilities.

(c) Medical Referral. If a staff member believes any resident to be in need of immediate medical attention or if a resident requests treatment, the resident shall be referred for medical services.

(d) Medical Confinement. Medical confinement may be ordered as a health precaution at the direction of a medical professional.

(1) The reasons for the medical confinement of a resident shall be documented and a copy placed in the resident's file.

(2) During medical confinement, a juvenile detention officer shall personally observe and record the resident's behavior in staggered intervals not to exceed 15 minutes.

(e) Medical Release. Documentation of consent for medical treatment received in accordance with Texas Family Code §32.001, shall be maintained in applicable resident files.

(f) Medication. In accordance with Texas Human Resources Code §142.005, the juvenile board shall adopt a policy concerning the administration of medication to residents. The policy shall include which facility employees are authorized to administer medication to residents.

(g) Suicidal Youth.

(1) Prevention Plan.

(A) Each facility shall have a written suicide prevention plan developed in consultation with a mental health professional that addresses the following components:

(i) definitions of high risk and moderate risk for suicidal behavior;

(ii) screening methodology to assess and assign a resident's risk of suicide upon admission and upon any indication a resident previously screened may now be at moderate or high risk for suicidal behavior;

(iii) communication among facility staff, mental health professionals, the resident's juvenile probation officer, the resident and the resident's parent or guardian including communication regarding observations or indications a resident previously screened may now be at moderate or high risk for suicidal behavior;

(iv) level of supervision for residents assigned to moderate or high risk for suicidal behavior;

(v) policy and procedure for intervening in suicide attempts;

(vi) reporting of resident suicides and attempted suicides in accordance with any applicable state law, administrative standard, or local policy or ordinance;

(vii) training on the contents and implementation of the suicide prevention plan;

(viii) housing of residents assigned to moderate or high risk of suicidal behavior including the removal from the resident's presence of any dangerous objects; and

(ix) mortality reviews designed to review the facility's compliance and possible needed revisions to the suicide prevention plan following a resident's suicide.

(B) All juvenile detention officers shall be trained in the implementation of the suicide prevention plan.

(C) Review.

(i) The suicide prevention plan shall be reviewed on an annual basis in consultation with a mental health professional.

(ii) The suicide prevention plan shall be included in the facility administrator's review of the facility's policies and procedures in accordance with §343.2(d)(1) of this chapter.

(2) Level of Supervision.

(A) Moderate Risk for Suicidal Behavior. During non-program hours, or any time a resident classified as a moderate risk for suicidal behavior is confined or restricted from the general population:

(i) The resident shall be visually checked by a juvenile detention officer at staggered intervals not to exceed every 10 minutes.

(ii) The juvenile detention officer shall document each visual observation made with the time of the observation and a general description of the resident's behavior.

(B) High-Risk for Suicidal Behavior.

(i) Supervision. During non-program hours, or any time a resident classified as high risk for suicidal behavior is confined or restricted from the general population:

(I) The resident shall be under the continuous, uninterrupted visual supervision of a juvenile detention officer.

(II) The juvenile detention officer shall document physical observations of a high risk resident at staggered intervals not to exceed every 30 minutes.

(ii) Required Documentation. The following documentation shall be maintained for high-risk residents and shall be posted where it is immediately accessible to the juvenile detention officer providing supervision to the high-risk resident:

(I) the date and time the resident was classified as high risk;

(II) who classified the resident as high risk;

(III) a description of the resident's behavior that caused the resident's classification as high risk;

(IV) who has been assigned to supervise the resident;

(V) the location for the resident's supervision;

(VI) the date and time the resident was reclassified as no longer being high risk; and

(VII) the name of the mental health professional who reclassified the resident as no longer being high risk.

(C) A juvenile detention officer assigned to work in a facility's primary control room may not provide supervision under subparagraph (A) or (B) of this paragraph.

(D) Video and audio monitoring devices shall not substitute for supervision by a juvenile detention officer under subparagraph (A) or (B) of this paragraph.

(3) Mental Health Referral.

(A) The facility shall refer a resident classified as exhibiting a high-risk for suicidal behavior to a mental health professional as defined by §343.1(19)(D)(i), (ii), (iii), (vi), and (vii) or (E) of this chapter or mental health agency within 24 hours from the time the resident is classified as a high risk for suicidal behavior.

(B) The facility shall maintain written documentation that the referral under subparagraph (A) of this paragraph was made. The documentation shall include:

(i) who notified the mental health professional or mental health agency;

(ii) the date and time of the notification;

(iii) the method of notification; and

(iv) a brief description of the response provided by the mental health professional or mental health agency.

(C) Prior to being removed from a high risk for suicidal behavior designation/classification, a mental health professional as defined by §343.1(19)(D)(i), (ii), (iii), (vii) or (E) of this chapter shall conduct an assessment of the resident's suicide risk and issue a written recommendation which addresses the following:

(i) the need to re-classify the resident's suicide risk level;

(ii) the need for intervention strategies and/or services during the resident's period of incarceration within the facility; and

(iii) the need for additional assessment(s).

(D) The mental health professional's written recommendation shall be maintained in the resident's record.

(E) Only the facility administrator, or their designee may remove a resident from being designated/classified as being a high risk for suicidal behavior under paragraph (2)(B) of this subsection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PRE-ADJUDICATION SECURE DETENTION FACILITY STANDARDS

37 TAC §§343.30 - 343.37

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

§343.30. Intake, Admission and Release.

(a) Intake. Anyone presented for admission to detention and in need of emergency medical care due to injury, illness or intoxication or in need of mental health intervention shall not be admitted into detention.

(1) The referring person shall be directed to a health care facility to have the individual evaluated and treated.

(2) Subsequent admission to detention is contingent upon written medical clearance provided by a health care or mental health professional.

(b) Intoxicated Individuals.

(1) Anyone admitted to detention shall be assessed to determine the need for detoxification from alcohol or other substances.

(2) Intoxicated individuals who have been medically cleared for admission should be placed under medical confinement in accordance with §343.10(d) of this chapter.

(c) Intake.

(1) An intake or other officer authorized by the court shall be on duty at the facility or on call 24 hours a day.

(2) Written policy shall state the conditions under which the intake officer may authorize the conditional release of an individual referred to the facility.

(d) Orientation.

(1) A detention officer shall orient each newly admitted resident to the facility.

(2) The orientation shall include, in the resident's primary language, an explanation of the following:

(A) facility's program rules;

(B) grievance policy and procedures; and

(C) the procedures to access health care.

(3) When a literacy problem prevents a resident from understanding written rules, a staff member or translator shall assist the resident in understanding the rules.

(4) If the resident is not sufficiently fluent in English or Spanish, then arrangements shall be made to provide the resident with an orientation in the resident's primary language within 48 hours of admission.

(e) Personal Property. Written policy shall describe the procedures regarding the handling of residents' personal property held by the facility.

(f) Bedding. Each resident shall be provided suitable clean bedding including sheets, pillow and pillowcase, mattress, and blankets.

(g) Clothing. Clean clothing is to be provided upon admission.

(h) Personal Hygiene. Residents shall be required to surrender their clothing and to bathe or shower upon admission.

(i) Screening. The TJPC Standard Screening Tool shall be administered to each resident that is admitted into detention.

(1) The tool shall be administered within 48 hours from the time the resident is admitted into detention.

(2) A copy of the completed tool shall be provided to the supervising juvenile probation officer.

(j) Health Screening. Within one hour of admission, a health screening shall be conducted on each resident. Information obtained shall include, but is not limited to:

(1) mental health problems;

(2) suicide risk in accordance with §343.10(g)(1)(A)(ii) of this chapter;

(3) current state of health including:

(A) allergies;

(B) other chronic conditions;

(C) tuberculosis;

(D) sexually transmitted diseases; and

(E) other infectious diseases;

(4) current use of medication including type, dosage and prescribing physician;

(5) dental problems;

(6) vision problems;

(7) drug and alcohol use;

(8) physical disabilities; and

(9) evidence of physical trauma.

(k) Any finding of the health screening that indicates a significant potential health risk to the staff and residents shall be immediately reported to the facility administrator, and the affected resident shall be placed in medical confinement until proper medical clearance is obtained.

(l) Assessment Period. Upon entering the facility, residents shall be assigned to the general program as soon as possible after admittance.

(1) Written policy shall prohibit automatic room confinement for periods of time longer than necessary to assess the risks and needs of the residents.

(2) If a resident is confined in his or her room at admission for assessment purposes, juvenile detention officers shall document their assessment of the resident during this 24-hour period and retain this documentation in the resident's file.

(3) A juvenile detention officer shall, at staggered intervals not to exceed 15 minutes, personally observe and record the behavior of residents in room confinement during the assessment period.

(m) Release. Procedures for releasing residents shall include:

(1) verification of identity of the person receiving custody;

(2) verification of release authorization;

(3) signed release by resident for the return of personal property; and

(4) receipt signed by person receiving custody.

§343.37. Programs.

(a) Education. The facility administrator shall ensure that there is an educational program that requires all residents to participate. The program shall include:

(1) courses of study that meet the requirements of the Texas Education Code;

(2) a minimum of 180 days of educational instruction or provide educational services that coincide with the local school district calendar;

(3) require coordination with the local education agency to provide appropriate special education services; and

(4) documentation of the notification to the local school district as required by the Texas Education Code §29.012.

(b) Reading Materials. Reading materials shall be available to all residents.

(c) Recreation.

(1) Recreational equipment and supplies shall be provided.

(2) The recreational schedule shall provide:

(A) at least one hour of organized physical activity per day; and

(B) at least one hour of open recreational activity per day.

(d) Work. Written policy requires that residents shall be responsible for cleaning their own rooms and other areas of the facility.

(1) Other work shall be voluntary unless it involves court-ordered community service restitution and shall meet state and federal child labor laws.

(2) Residents shall not be required to perform personal services for staff.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. POST-ADJUDICATION SECURE CORRECTIONAL FACILITY STANDARDS

37 TAC §§343.45 - 343.52

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

§343.52. Programs.

(a) Education. The facility administrator shall ensure that there is an educational program that requires all residents to participate. The program shall:

(1) provide a minimum of 180 days of educational instruction or provide educational services that coincide with the local school district calendar;

(2) provide a minimum of four hours of educational instruction to each resident on every day that the local school district is normally in session;

(3) require coordination with the local education agency to provide appropriate special education services; and

(4) documentation of the notification to the local school district as required by the Texas Education Code §29.012.

(b) Reading Materials. Reading materials shall be available to all residents.

(c) Recreation. Recreational material, equipment, and supplies shall be provided for both indoor and outdoor activities. A recreational schedule shall provide:

(1) at least one hour of organized physical activity per day;

(2) at least one hour of open recreational activity per day; and

(3) indoor and outdoor activity for all residents.

(d) Individualized Treatment Plan. The facility shall develop an individualized treatment plan in collaboration with the juvenile probation department in accordance with the following:

(1) The Individualized Treatment Plan shall:

(A) be developed and implemented within 30 calendar days of the resident's initial date of placement;

(B) be developed in consultation with the resident's parent, guardian or custodian, the resident, and the supervising juvenile probation officer;

(C) contain specific behavioral goals using the nine domains outlined in Title 1, Part 15, §351.13 of the Texas Administrative Code;

(D) be signed by the resident and the resident's parent, guardian or custodian, the substitute care provider, and the resident's supervising probation officer; and

(E) be retained in the resident's record with copies provided to the resident, the resident's parent, guardian or custodian and the supervising juvenile probation department.

(2) Individualized Treatment Plan Review.

(A) Treatment plans shall be reviewed and updated every 90 calendar days.

(B) The resident and at least one parent, guardian, or custodian shall participate in the treatment plan review with the substitute care provider and the resident's supervising juvenile probation officer.

(C) The treatment plan reviews shall measure the resident's progress toward meeting his/her goals using the six-point scale outlined in Title 1, Part 15, §351.13 of the Texas Administrative Code.

(D) The outcome of the substitute care provider's service delivery shall be assessed based on whether the juvenile is progressing in fifty percent or more of identified goals.

(E) Treatment plan reviews shall be signed by the resident, the resident's parent, guardian, or custodian and the supervising juvenile probation officer.

(F) Copies of every treatment plan review shall be retained in the resident's record.

(e) Rehabilitative Services. The social services program shall provide:

(1) individual counseling;

(2) group counseling;

(3) substance abuse prevention education; and

(4) AIDS awareness.

(f) Physical Training Program.

(1) If a facility has a physical training program, the facility shall have a written physical training program plan. The plan shall include:

(A) an initial physical fitness screening tool;

(B) types of exercises; and

(C) exercise time limits.

(2) Before participating in the physical training program, the resident shall:

(A) have an initial physical fitness screening administered by the facility to determine the resident's ability to participate in the program; and

(B) have a signed release by a physician to participate in a program of strenuous physical exercise.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. RESTRAINTS

37 TAC §§343.60 - 343.68

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

§343.66. Restraint Chair.

In addition to the requirements found in §§343.61 - 343.63 of this chapter, the use of the restraint chair shall be governed by the following criteria:

(1) Requirements.

(A) only a professionally manufactured restraint chair approved by the juvenile board may be used in a juvenile facility;

(B) the restraint chair may only be used to prevent self-injury, injury to others, or when a resident displays extremely aggressive or disruptive behavior and other approved restraint techniques are inappropriate or ineffective to control the resident's behavior; and

(C) only a juvenile probation or detention officer who has been trained in the proper use of the restraint chair shall:

(i) be authorized to place a resident in the restraint chair; and

(ii) provide supervision of a resident placed in the restraint chair;

(D) circulation checks shall be conducted by a juvenile probation or detention officer every 10 minutes;

(E) length of confinement

(i) a resident shall be released from the restraint chair as soon as the resident is no longer a threat to self or others and the resident can be reasonably controlled by staff;

(ii) a resident shall be considered for removal from the restraint chair every ten minutes;

(iii) the maximum confinement time in the restraint chair is one hour unless authorized by the facility administrator or designee after examination of the resident's condition by one of the following licensed medical professionals:

(I) emergency medical services (EMS/fire rescue);

(II) paramedic;

(III) registered nurse (RN);

(IV) physician (MD);

(V) licensed vocational nurse (LVN);

(VI) physician assistant (PA); or

(VII) emergency medical technician (EMT);

(iv) five hours is the maximum total time a resident may be restrained in a restraint chair within a twenty-four hour period;

(F) each use of the restraint chair shall be authorized by the facility administrator or designee;

(G) when occupied, the restraint chair shall be placed in an area with minimum visibility by other residents in the facility; and

(H) there shall be provisions for the inspection and maintenance of the restraint chair.

(2) Prohibitions.

(A) restraint chairs that have been altered, modified or customized in any way from their originally manufactured state and intended use; and

(B) the restraint chair shall not be used to confine any resident for the sole reason as having been designated as being at high risk of suicidal behavior.

(3) Supervision of Resident in Restraint Chair.

(A) level of supervision.

(i) a resident placed in the restraint chair shall be under constant visual supervision until the resident is removed from the chair;

(ii) the officer responsible for providing the constant visual supervision of a resident in the restraint chair may have limited concurrent duties only if those duties do not impede the constant visual supervision requirement; and

(iii) a resident classified as high risk of suicidal behavior under §343.10(g) of this chapter who is placed in a restraint chair shall be supervised in accordance with §343.10(g)(2)(B) of this chapter;

(B) the officer responsible for providing the constant visual supervision of a resident in the restraint chair shall have physical possession of the key or other mechanism for unlocking or releasing the resident from the restraint chair;

(C) primary control room staff shall not be authorized to provide the constant visual supervision of a resident placed in the restraint chair; and

(D) audio and/or video monitoring cannot substitute for the constant visual supervision;

(4) Required Training. Any juvenile probation or juvenile detention officer authorized to place a resident into a restraint chair shall be trained annually in the proper use of the restraint chair. Training topics shall include but not be limited to:

(A) circumstances that are appropriate for use of the restraint chair;

(B) proper use of the restraint chair, including how to get a resident in and out of the device safely;

(C) supervision procedures for a resident placed in the chair;

(D) monitoring the vital signs and critical circulation points of a resident placed in the restraint chair;

(E) emergency procedures for the removal of a resident from the restraint chair; and

(F) documentation required for use of the restraint chair.

(5) Documentation of Chair Restraints. In addition to any documentation required under §343.63 of this chapter a ten-minute observation log shall be maintained that documents:

(A) justification for the resident's continued restraint in or removal from the restraint chair;

(B) the results of the circulation checks conducted under paragraph (1)(D) of this section; and

(C) any checks conducted under paragraph (1)(E)(iii) of this section.

(6) Review of Use of Restraint Chair.

(A) The facility administrator and the juvenile board shall review the use of the restraint chair annually.

(B) The review shall consider and evaluate:

(i) the frequency of use;

(ii) the outcomes of the chair's use; and

(iii) any needed modifications to policy and procedure concerning the chair.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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CHAPTER 347. TITLE IV-E FEDERAL FOSTER CARE PROGRAMS

37 TAC §§347.1, 347.3, 347.5, 347.7, 347.9, 347.11, 347.13, 347.15, 347.17, 347.19, 347.21

The Texas Juvenile Probation Commission adopts new Chapter 347, §§347.1, 347.3, 347.5, 347.7, 347.9, 347.11, 347.13, 347.15, 347.17, 347.19, and 347.21, relating to standards for Title IV-E Federal Foster Care Programs. This chapter is adopted without changes to the text as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1114) and will not be republished.

TJPC adopts this rule in an effort to provide structural and substantive changes from the current standards.

No public comment was received regarding adoption of the new sections.

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 348. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS

The Texas Juvenile Probation Commission adopts new Chapter 348, §§348.1-348.19 and §§348.30-348.33, relating to standards for juvenile justice alternative education programs. This chapter is adopted without changes as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1114) and will not be republished.

TJPC adopts this rule in an effort to provide structural and substantive changes from the current standards.

No public comment was received.

SUBCHAPTER A. PROGRAM OPERATIONS

37 TAC §§348.1 - 348.19

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. ACCOUNTABILITY

37 TAC §§348.30 - 348.33

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

The Texas Juvenile Probation Commission adopts new Chapter 349, §§349.1, 349.2, 349.7-349.15, 349.21-349.32, 349.37, 349.42-349.52, 349.57-349.64, and 349.69-349.72, relating to general administrative standards. Section 349.7 and §349.10 are adopted with changes to the text as proposed in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1073). Sections §§349.1, 349.2, 349.8, 349.9, 349.11-349.15, 349.21-349.32, 349.37, 349.42-349.52, 349.57-349.64, and 349.69-349.72 are adopted without changes and will not be republished.

TJPC adopts this rule in an effort to provide structural and substantive changes from the current standards.

No public comment was received regarding adoption of the new sections.

SUBCHAPTER A. DEFINITIONS

37 TAC §349.1

The standard is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the new standard.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. WAIVER

37 TAC §349.2

The standard is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the new standard.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. CERTIFICATION AND RECERTIFICATION

37 TAC §§349.7 - 349.15

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

§349.7. Certification Eligibility.

(a) Basic Eligibility Requirements.

(1) In addition to the requirements in subsections (b) or (c) of this section an applicant is eligible for certification from the Commission if the applicant:

(A) is twenty-one years of age or older;

(B) does not have any of the following disqualifying criminal history:

(i) a felony conviction against the laws of this state, another state, or the United States within the past 10 years;

(ii) a deferred adjudication for a felony against the laws of this state, another state, or the United States within the past 10 years;

(iii) current felony probation or parole;

(iv) a jailable misdemeanor conviction against the laws of this state, another state or the United States within the past 5 years;

(v) a deferred adjudication for a jailable misdemeanor against the laws of this state, another state, or the United States within the past 5 years;

(vi) current misdemeanor probation or parole; or

(vii) registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(C) is not currently under an order of suspension issued under §349.27 or §349.31 of this chapter; and

(D) has never had any type of certification revoked from the Commission under §349.27(D)(3) of this chapter.

(2) A request for waiver may not be requested for any disqualifying criminal history under paragraph 1(B) of this subsection unless the person received a pardon based upon proof of innocence or the reversal of a finding of guilt by either the trial or an appellate court.

(b) Probation Officer.

(1) In addition to meeting the requirements under subsection (a) of this section, an applicant is eligible for certification as a probation officer if the applicant:

(A) meets the employment eligibility requirements under §341.20 of this title or has received an exemption under §341.21 of this title; and

(B) completes 40 hours of certification training in accordance with §349.15(c)(1) of this chapter within 18 months prior to the Commission's receipt of the certification application.

(2) An individual with a degree from a foreign college or university may apply one time for provisional certification as a probation officer under §349.9 of this chapter.

(c) Detention Officer.

(1) In addition to meeting the requirements under subsection (a) of this section, an applicant is eligible for certification as a detention officer if the applicant:

(A) meets the employment eligibility requirements under §343.15 of this title;

(B) has completed 40 hours of certification training in accordance with §349.15(c)(2) of this chapter within 18 months prior to the Commission's receipt of the certification application;

(C) has one of the following:

(i) a high school diploma;

(ii) a general equivalency diploma from a high school or issuing authority within the United States of America;

(iii) a United States Military record that indicates the education level received is equivalent to a United States high school diploma or general equivalency diploma;

(iv) a foreign high school or home schooling diploma that meets the validation requirements under §349.9(b)(2) of this chapter; or

(v) unconditional acceptance into an accredited college or university accredited by an accrediting organization recognized by the Higher Education Coordinating Board.

(D) has current certification in:

(i) Cardiopulmonary Resuscitation (CPR);

(ii) First Aid; and

(iii) an approved physical restraint technique as defined by §343.60(1) of this chapter;

(2) An applicant with a high school diploma issued in a foreign country or who completed high school under home schooling may apply one time for provisional certification under §349.9 of this chapter.

§349.10. Recertification Eligibility.

(a) Basic Eligibility Requirements.

(1) In addition to the requirements in subsections (b) or (c) of this section, an applicant is eligible for recertification from the Commission if the applicant:

(A) does not have any of the following disqualifying criminal history:

(i) a felony conviction against the laws of this state, another state, or the United States within the past 10 years;

(ii) a deferred adjudication for a felony against the laws of this state, another state, or the United States within the past 10 years;

(iii) current felony probation or parole;

(iv) a jailable misdemeanor conviction against the laws of this state, another state or the United States within the past 5 years;

(v) a deferred adjudication for a jailable misdemeanor against the laws of this state, another state, or the United States within the past 5 years;

(vi) current misdemeanor probation or parole; or

(vii) registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(B) is not currently under an order of suspension issued under §349.27(d)(2) or §349.31 of this chapter; and

(C) has never had any type of certification revoked from the Commission under §349.27(d)(3) of this chapter.

(2) A request for waiver may not be requested for any disqualifying criminal history under subsection (a)(1)(A) of this section unless the person received a pardon based upon proof of innocence or the reversal of a finding of guilt by either the trial or an appellate court;

(b) Probation Officer. In addition to meeting the requirements under subsection (a) of this section, an applicant is eligible for recertification as a probation officer if the applicant:

(1) has completed 80 hours of recertification training in accordance with §349.15(d) of this chapter within the two years following the date of the certification's or recertification's approval; and

(2) if the person applying for recertification is the chief administrative officer, 20 hours of the required recertification training shall be in management and supervisory skills.

(c) Detention Officer. In addition to meeting the requirements under subsection (a) of this section, an applicant is eligible for recertification as a detention officer if the applicant:

(1) has completed 80 hours of recertification training in accordance with §349.15(d) of this chapter within the two years following the date of the certification's or recertification's approval; and

(2) if the person applying for recertification is the facility administrator, 20 hours of the required recertification training shall be in management and supervisory skills.

(3) has current certifications in:

(A) Cardiopulmonary Resuscitation (CPR);

(B) First Aid; and

(C) an approved physical restraint technique as defined by §343.60(1) of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Deputy Executive Director and General Counsel
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SUBCHAPTER D. DISCIPLINARY HEARINGS

37 TAC §§349.21 - 349.32

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. COMPLAINTS AGAINST JUVENILE BOARDS

37 TAC §349.37

The standard is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the new standard.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. ABUSE, EXPLOITATION AND NEGLECT INVESTIGATIONS

37 TAC §§349.42 - 349.52

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. CONFIDENTIALITY AND RELEASE OF ABUSE, EXPLOITATION AND NEGLECT INVESTIGATION RECORDS

37 TAC §§349.57 - 349.64

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. MEMORANDA OF UNDERSTANDING

37 TAC §§349.69 - 349.72

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 351. STANDARDS FOR SHORT-TERM DETENTION FACILITIES

The Texas Juvenile Probation Commission adopts new Chapter 351, §§351.1 - 351.17, 351.30 - 351.33, and 351.40 - 351.48, relating to standards for short-term detention facilities. Section 351.1 and §351.46 are adopted with non-substantive changes to the proposed text as published in the February 7, 2003, issue (28 TexReg 1142). Sections 351.2 - 351.17, 351.30 - 351.33, and 351.40 - 351.45, 351.47, 351.48 are adopted without changes and will not be republished.

TJPC adopts this rule in an effort to provide structural and substantive changes from the current standards.

No public comment was received regarding the new sections.

SUBCHAPTER A. DEFINITIONS

37 TAC §351.1

The new section is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the new section.

§351.1. Definitions.

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

(1) Alleged Victim--A juvenile alleged as being a victim of abuse, exploitation or neglect.

(2) Attempted Suicide--Any action a resident takes that could result in taking his or her own life voluntarily and intentionally while detained or placed in a short-term detention facility.

(3) Chemical Agents--Oleorsin Capsicum (OC) pepper spray, or Orthoclhorobenzalmalonoitrile (tear gas).

(4) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department or a multi-county juvenile judicial district.

(5) Commission--The Texas Juvenile Probation Commission.

(6) Contraband--Any item not issued to employees for the performance of their duties and which employees have not obtained supervisory approval to possess. Contraband also includes any item given to a resident by an employee or other individual, which a resident is not authorized to possess or use. Specific items of contraband include, but are not limited to:

(A) firearms;

(B) knives;

(C) ammunition;

(D) drugs;

(E) intoxicants;

(F) pornography; and

(G) any unauthorized written or verbal communication brought into or taken from an institution for a resident, former resident, associate of or family members of a resident.

(7) Design Capacity--The number of people that can safely occupy a building or space as determined by the original architectural design and any building modifications, licensing, accreditation, regulatory authorities, and building codes.

(8) Facility Administrator--Individual designated by the Chief Administrative Officer or juvenile board, as the on-site program director or superintendent of a short-term detention facility.

(9) Health Care Professional--Practitioner licensed or certified by:

(A) the Texas Board of Nurse Examiners;

(B) the Texas Board of Medical Examiners;

(C) the State Board of Physician Assistants; or

(D) the Texas Department of Health.

(10) Mental Health Professional--Practitioner licensed or certified by:

(A) the Texas State Board of Examiners of Professional Counselors;

(B) the Texas State Board of Examiners of Marriage and Family Therapists;

(C) the Texas Department of Health;

(D) the Texas Commission on Alcohol and Drug Abuse;

(E) the Texas State Board of Examiners of Psychologists; and

(F) the Texas Board of Social Worker Examiners provided the licensure is either as an advanced practitioner or advanced clinical practitioner;

(G) the Texas State Board of Medical Examiners; or

(H) mental health professionals employed by the Texas Department of Mental Health and Mental Retardation or an entity that contracts as a service provider with the Texas Department of Mental Health and Mental Retardation.

(11) Primary Control Room--A restricted or secure area from which entrance into and exit from a secure facility is controlled. The primary control room also contains the emergency, monitoring, and communications systems and is staffed 24 hours each day that residents are in the facility.

(12) Resident--A juvenile or other individual that has been admitted into a short-term detention facility.

(13) Short-Term Detention--The temporary secure custody of a juvenile or other individual pending the first hearing to be conducted under Texas Family Code §54.01.

(14) Short-Term Detention Facility ("Facility")--A facility used to provide temporary secure custody of a juvenile or other individual pending the first detention hearing to be conducted under Texas Family Code §54.01.

(15) Short-Term Detention Officer--A person whose primary responsibility is the supervision of the daily activities of the short-term detention facility's residents.

(16) TJPC Standard Screening Tool--An instrument approved by the Commission that screens the juvenile's needs in the area of mental health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. SHORT-TERM DETENTION FACILITY STANDARDS

37 TAC §§351.2 - 351.17

The new sections are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the new sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. SHORT-TERM JUVENILE DETENTION OFFICERS

37 TAC §§351.30 - 351.33

The new sections are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the new sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. RESTRAINTS

37 TAC §§351.40 - 351.48

The new sections are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the new sections.

§351.46. Restraint Chair.

(a) Requirements. In addition to the requirements found in §§351.41, 351.42 and 351.43 of this chapter, the use of the restraint chair shall be governed by the following criteria:

(1) only a professionally manufactured restraint chair approved by the juvenile board may be used in a juvenile facility;

(2) the restraint chair may only be used to prevent self-injury, injury to others, or when a resident displays extremely aggressive or disruptive behavior and other approved restraint techniques are inappropriate or ineffective to control the resident's behavior; and

(3) only a juvenile probation or detention officer who has been trained in the proper use of the restraint chair shall:

(A) be authorized to place a resident in the restraint chair; and

(B) provide supervision of a resident placed in the restraint chair;

(4) circulation checks shall be conducted by a juvenile probation or detention officer every 10 minutes;

(5) length of confinement

(A) a resident shall be released from the restraint chair as soon as the resident is no longer a threat to self or others and the resident can be reasonably controlled by staff;

(B) a resident shall be considered for removal from the restraint chair every ten minutes;

(C) the maximum confinement time in the restraint chair is one hour unless authorized by the facility administrator or designee after examination of the resident's condition by one of the following licensed medical professionals:

(i) emergency medical services (EMS/fire rescue);

(ii) paramedic;

(iii) registered nurse (RN);

(iv) physician (MD);

(v) licensed vocational nurse (LVN);

(vi) physician assistant (PA); or

(vii) emergency medical technician (EMT);

(D) five hours is the maximum total time a resident may be restrained in a restraint chair within a twenty-four hour period;

(6) each use of the restraint chair shall be authorized by the facility administrator or designee;

(7) when occupied, the restraint chair shall be placed in an area with minimum visibility by other residents in the facility; and

(8) there shall be provisions for the inspection and maintenance of the restraint chair.

(b) Prohibitions.

(1) restraint chairs that have been altered, modified or customized in any way from their originally manufactured state and intended use; and

(2) the restraint chair shall not be used to confine any resident for the sole reason as having been designated as being at high risk of suicidal behavior.

(c) Supervision of Resident in Restraint Chair.

(1) level of supervision.

(A) a resident placed in the restraint chair shall be under constant visual supervision until the resident is removed from the chair;

(B) the officer responsible for providing the constant visual supervision of a resident in the restraint chair may have limited concurrent duties only if those duties do not impede the constant visual supervision requirement; and

(C) a resident classified as high risk of suicidal behavior under §351.13(d) of this chapter who is placed in a restraint chair shall be supervised in accordance with §351.13(d)(2)(B) of this chapter;

(2) the officer responsible for providing the constant visual supervision of a resident in the restraint chair shall have physical possession of the key or other mechanism for unlocking or releasing the resident from the restraint chair;

(3) primary control room staff shall not be authorized to provide the constant visual supervision of a resident placed in the restraint chair; and

(4) audio and/or video monitoring cannot substitute for the constant visual supervision;

(d) Required Training. Any juvenile probation or juvenile detention officer authorized to place a resident into a restraint chair shall be trained annually in the proper use of the restraint chair. Training topics shall include but not be limited to:

(1) circumstances that are appropriate for use of the restraint chair;

(2) proper use of the restraint chair, including how to get a resident in and out of the device safely;

(3) supervision procedures for a resident placed in the chair;

(4) monitoring the vital signs and critical circulation points of a resident placed in the restraint chair;

(5) emergency procedures for the removal of a resident from the restraint chair; and

(6) documentation required for use of the restraint chair.

(e) Documentation of Chair Restraints. In addition to any documentation required under §351.43 of this chapter a ten-minute observation log shall be maintained that documents:

(1) justification for the resident's continued restraint in or removal from the restraint chair;

(2) the results of the circulation checks conducted under subsection (a)(4) of this section; and

(3) any medical checks conducted under subsection (a)(5)(C) of this section.

(f) Review of Use of Restraint Chair.

(1) The facility administrator and the juvenile board shall review the use of the restraint chair annually.

(2) The review shall consider and evaluate:

(A) the frequency of use;

(B) the outcomes of the chair's use; and

(C) any needed modifications to policy and procedure concerning the chair.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 6. DISASTER ASSISTANCE PROGRAM

The Texas Department of Human Services (DHS) adopts the repeal of §§6.1-6.3, 6.101-6.105, 6.201, and 6.301-6.306; and adopts new §§6.101-6.109, 6.201-6.222, 6.301-6.311, 6.401-6.418, and 6.501-6.511 in its Disaster Assistance Program chapter. New §6.203 is adopted with changes to the proposed text published in the January 24, 2003, issue of the *Texas Register* (28 TexReg 645). The repeal of §§6.1-6.3, 6.101-6.105, 6.201, and 6.301-6.306; and new §§6.101-6.109, 6.201, 6.202, 6.204-6.222, 6.301-6.311, 6.401-6.418, and 6.501-6.511 are adopted without changes to the proposed text.

Justification for the repeals and new sections is to delete obsolete rules from the rule base and implement provisions of the Disaster Mitigation Act of 2000, 42 United States Code §§5121-5206. The new sections were undertaken as part of a DHS project to rewrite agency rules in plain language format to make them easier for the general public to use and understand.

DHS received no comments regarding adoption of the repeals and new sections. DHS corrected a publication error on page 649 in the proposed text of §6.203, which was not structured properly. This correction is included in the adoption.

SUBCHAPTER A. GENERAL INFORMATION

40 TAC §§6.1 - 6.3

The repeals are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.0001-22.038.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2003.

TRD-200301778
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: April 6, 2003
Proposal publication date: January 24, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER B. ELIGIBILITY CRITERIA FOR INDIVIDUAL AND FAMILY GRANTS

40 TAC §§6.101 - 6.105

The repeals are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.0001-22.038.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2003.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: April 6, 2003
Proposal publication date: January 24, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER C. PROCESSING INDIVIDUAL AND FAMILY GRANTS

40 TAC §6.201

The repeal is adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The repeal implements the Human Resources Code, §§22.0001-22.038.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200301780
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: April 6, 2003
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For further information, please call: (512) 438-3734

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SUBCHAPTER D. CASE DECISION, REVIEW, AND CLOSING

40 TAC §§6.301 - 6.306

The repeals are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.0001-22.038.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2003.

TRD-200301781
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: April 6, 2003
Proposal publication date: January 24, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER A. GENERAL INFORMATION

40 TAC §§6.101 - 6.109

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2003.

TRD-200301782
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: April 6, 2003
Proposal publication date: January 24, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER B. ELIGIBILITY CRITERIA FOR OTHER NEEDS ASSISTANCE (ONA) GRANTS

40 TAC §§6.201 - 6.222

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

§6.203. What types of losses are eligible for me to receive an Other Needs Assistance (ONA) grant?

You must have losses in one of the two types of ONA assistance:

(1) medical, dental, and funeral expenses; or

(2) personal property, transportation, moving, and other expenses. Other expenses are:

(A) tangible items not owned at the time of the disaster;

(B) services not included in the specified categories for ONA;

(C) services FEMA and the state determine as eligible unique disaster-related necessary expenses and serious needs, which include:

(i) air purifier;

(ii) chain saw;

(iii) cord of wood;

(iv) dehumidifier;

(v) fuel for heating;

(vi) sump pump;

(vii) wet/dry vacuum; or

(viii) other item as specified in the state administrative plan;

(D) moving and storage expenses; and

(E) purchase of a Group Flood Insurance Policy.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2003.

TRD-200301783
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: April 6, 2003
Proposal publication date: January 24, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER C. APPLYING FOR AN OTHER NEEDS ASSISTANCE GRANT

40 TAC §§6.301 - 6.311

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2003.

TRD-200301784
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: April 6, 2003
Proposal publication date: January 24, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER D. RECONSIDERATION AND APPEALS

40 TAC §§6.401 - 6.418

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2003.

TRD-200301785
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: April 6, 2003
Proposal publication date: January 24, 2003
For further information, please call: (512) 438-3734

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SUBCHAPTER E. NATIONAL FLOOD INSURANCE PROGRAM (NFIP)

40 TAC §§6.501 - 6.511

The new sections are adopted under the Human Resources Code, Chapter 22, which authorizes DHS to administer public assistance programs.

The new sections implement the Human Resources Code, §§22.0001-22.038.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2003.

TRD-200301786
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: April 6, 2003
Proposal publication date: January 24, 2003
For further information, please call: (512) 438-3734

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 1. Texas Department of Health, Chapter 295. Occupational Health, Subchapter H. Hazardous Chemical Right-To-Know, §§295.181 - 295.183.

This review is in accordance with the requirements of the Texas Government Code, §2001.039 regarding agency review of existing rules.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continues to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the committee.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the committee.

TRD-200302025
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 26, 2003

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Adopted Rule Reviews

Texas Animal Health Commission

Title 4, Part 2

The Texas Animal Health Commission (TAHC), has completed the review and finds the need still exists for Chapter 31, concerning "Anthrax" in accordance with the Texas Government Code, §2001.039. The rules reviewed were found in Chapter 31, which is located in Title 4, Part 2, of the Texas Administrative Code and contain the following sections:

§31.1. Diagnosis.

§31.2. Quarantine.

§31.3. Disposal.

The proposed rule review was published in the December 27, 2002, issue of the *Texas Register* (27 TexReg 12381)

The commission readopts these sections pursuant to the requirements of the §2001.039 of the Texas Government Code and finds reasons for adopting these rules continue to exist.

No comments were received regarding the proposed rule review.

This completes the review of Chapter 31, Anthrax.

TRD-200301838
Gene Snelson
General Counsel
Texas Animal Health Commission
Filed: March 20, 2003

♦ ♦ ♦

The Texas Animal Health Commission (TAHC), has completed the review and finds the need still exists for Chapter 32, concerning 'Hearing and Appeal Procedures' in accordance with the Texas Government Code, §2001.039. The rules reviewed were found in Chapter 32, which are located in Title 4, Part 2, of the Texas Administrative Code and contain the following sections:

§32.1. Definitions

§32.2. Appeal of a Decision or Order by the Executive Director.

§32.5. Decisions and Orders.

§32.6. Transcript of the Hearing.

The proposed rule review was published in the December 27, 2002, issue of the *Texas Register* (27 TexReg 12381)

The commission readopts these sections pursuant to the requirements of the §2001.039 of the Texas Government Code and finds reasons for adopting these rules continue to exist.

No comments were received regarding the proposed rule review.

This completes the review of Chapter 32, Hearing and Appeal Procedures.

TRD-200301839
Gene Snelson
General Counsel
Texas Animal Health Commission
Filed: March 20, 2003

♦ ♦ ♦

The Texas Animal Health Commission (TAHC), has completed the review and finds the need still exists for Chapter 34, concerning 'Veterinary Biologics' in accordance with the Texas Government Code, §2001.039. The rules to be reviewed are found in Chapter 34, which are located in Title 4, Part 2, of the Texas Administrative Code and contain the following sections:

§34.1. Definitions.

§34.2. General Requirements.

The proposed rule review was published in the December 27, 2002, issue of the *Texas Register* (27 TexReg 12381)

The commission readopts these sections pursuant to the requirements of the §2001.039 of the Texas Government Code and finds reasons for adopting these rules continue to exist.

No comments were received regarding the proposed rule review.

This completes the review of Chapter 34, Veterinary Biologics.

TRD-200301840
Gene Snelson
General Counsel
Texas Animal Health Commission
Filed: March 20, 2003

♦ ♦ ♦

Credit Union Department

Title 7, Part 6

The Credit Union Commission has completed the review of Texas Administrative Code Title 7, Chapter 91, §§91.703 relating to interest; 91.705 relating to home improvement loans; 91.706 relating to home equity loans; 91.707 relating to reverse mortgages; 91.714 relating leasing; 91.716 relating to prohibited fees; and 91.717 relating to more stringent restrictions. Notice of the proposed review was published in the December 13, 2002, issue of the *Texas Register* (27 TexReg 11797).

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting 7 TAC §§91.703, 91.705, 91.706, 91.707, 91.714, 91.716, and 91.717 continue to exist and readopts these sections without changes pursuant to the requirements of Government Code, Section 2001.039.

TRD-200301987
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 25, 2003

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §12.72(c)(1)

Part of §12.71 That Provides Protection	Protected Feature	Type of Land to Which Request Pertains	Agency Responsible for Determination	Applicable Definition of Valid Existing Rights
(a)(1)	National Parks, Wildlife Refuges, etc.	Federal	OSM	Federal[1]
(a)(1)	National Parks, Wildlife Refuges, etc.	Non-Federal	Commission	Federal[1]
(a)(2)	Federal Lands in National Forests[3]	Federal	OSM	Federal[1]
(a)(3)	Public Parks and Historic Places	Non-Federal	Commission	Commission[2]
(a)(4)	Public Roads	Non-Federal	Commission	Commission[2]
(a)(5)	Occupied Dwellings	Non-Federal	Commission	Commission[2]
(a)(6)	Schools, Churches, Parks, etc.	Non-Federal	Commission	Commission[2]
(a)(7)	Cemeteries	Non-Federal	Commission	Commission[2]
[1] Definition in 30 CFR 761.5.				
[2] Definition in 16 Texas Admin. Code §12.3.				
[3] Neither the federal Act nor the state Act provides special protection for non-federal lands within national forests. Therefore, this table does not include a category for those lands.				

Figure 1: 30 TAC Chapter 113--Preamble

40 CFR 63 Subpart (Chapter 113 Section)	MACT Title	Original Incorporation (Commission Adoption)
F (§113.110)	Synthetic Organic Chemical Manufacturing Industry	June 25, 1997
G (§113.120)	Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater	June 25, 1997
H (§113.130)	Organic Hazardous Air Pollutants for Equipment Leaks	June 25, 1997
L (§113.170)	Coke Oven Batteries	July 14, 1999
O (§113.200)	Ethylene Oxide Emissions Standards for Sterilization Facilities	October 15, 1997
S (§113.240)	Pulp and Paper Industry	July 14, 1999
T (§113.250)	Halogenated Solvent Cleaning	June 25, 1997
U (§113.260)	Group I Polymers and Resins	October 7, 1998
W (§113.280)	Epoxy Resins Production and Non-Nylon Polyamides Production	October 15, 1997
AA (§113.320)	Phosphoric Acid Manufacturing Plants	June 14, 2000
BB (§113.330)	Phosphate Fertilizers Production Plants	June 14, 2000
CC (§113.340)	Petroleum Refineries	October 15, 1997
DD (§113.350)	Off-Site Waste and Recovery Operations	October 7, 1998
GG (§113.380)	Aerospace Manufacturing and Rework Facilities	October 15, 1997
HH (§113.390)	Oil and Natural Gas Production Facilities	June 14, 2000
II (§113.400)	Shipbuilding and Ship Repair (Surface Coating)	October 7, 1998
PP (§113.470)	Containers	July 14, 1999
RR (§113.490)	Individual Drain Systems	July 14, 1999
SS (§113.500)	Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process	June 14, 2000
TT (§113.510)	Equipment Leaks - Control Level 1	June 14, 2000
UU (§113.520)	Equipment Leaks - Control Level 2	June 14, 2000

40 CFR 63 Subpart (Chapter 113 Section)	MACT Title	Original Incorporation (Commission Adoption)
VV (§113.530)	Oil Water Separators and Organic-Water Separators	July 15, 1999
WW (§113.540)	Storage Vessels (Tanks) - Control Level 2	June 14, 2000
YY (§113.560)	Generic Maximum Achievable Control Technology Standards	June 14, 2000
EEE (§113.620)	Hazardous Waste Combustors	July 14, 1999
GGG (§113.640)	Pharmaceuticals Production	July 14, 1999
HHH (§113.650)	Natural Gas Transmission and Storage Facilities	June 14, 2000
JJJ (§113.670)	Group IV Polymers and Resins	October 7, 1998
LLL (§113.690)	Portland Cement Manufacturing Industry	June 14, 2000
MMM (§113.700)	Pesticide Active Ingredient Production	June 14, 2000
OOO (§113.720)	Manufacture of Amino/Phenolic Resins	June 14, 2000
PPP (§113.730)	Polyether Polyols Production	June 14, 2000
VVV (§113.790)	Publicly Owned Treatment Works	June 14, 2000
XXX (§113.810)	Ferroalloys Production: Ferromanganese and Silicomanganese	June 14, 2000

Figure 2: 30 TAC Chapter 113--Preamble

40 CFR 63 Subpart (Chapter 113 Section)	MACT Title
J (§113.150)	Polyvinyl Chloride and Copolymers Production
MM (§113.440)	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand Alone Semichemical Pulp Mills
XX (§113.550)	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations
QQQ (§113.740)	Primary Copper Smelting
RRR (§113.750)	Secondary Aluminum Production
UUU (§113.780)	Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units
AAAA (§113.840)	Municipal Solid Waste Landfills
CCCC (§113.860)	Manufacturing of Nutritional Yeast
GGGG (§113.900)	Solvent Extraction for Vegetable Oil Production
HHHH (§113.910)	Wet-Formed Fiberglass Mat Production
JJJJ (§113.930)	Paper and Other Web Coating
NNNN (§113.970)	Surface Coating of Large Appliances
SSSS (§113.1020)	Surface Coating of Metal Coil
TTTT (§113.1030)	Leather Finishing Operations
UUUU (§113.1040)	Cellulose Products Manufacturing
VVVV (§113.1050)	Boat Manufacturing
XXXX (§113.1070)	Rubber Tire Manufacturing
QQQQQ (§113.1260)	Friction Materials Manufacturing Facilities

Figure: 30 TAC §116.12(11)(A)

TABLE I

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT designation[1]	MAJOR SOURCE tons/year	MAJOR MODIFICATION[2] tons/year	OFFSET RATIO minimum
OZONE (VOC, NO_x)[3]			
I marginal	100	40	1.10 to 1
II moderate	100	40	1.15 to 1
III serious	50	25	1.20 to 1
IV severe	25	25	1.30 to 1
CO			
I moderate	100	100	1.00 to 1[4]
II serious	50	50	1.00 to 1[4]
SO_2	100	40	1.00 to 1[4]
PM_{10}			
I moderate	100	15	1.00 to 1[4]
II serious	70	15	1.00 to 1[4]
NO_x[5]	100	40	1.00 to 1[4]
Lead	100	0.6	1.00 to 1[4]

[1] Texas nonattainment area designations are specified in 40 Code of Federal Regulations §81.344.

[2] The major modification threshold is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to the project. The appropriate netting triggers for existing major sources of NO_x and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) and for other pollutants are equal to the major modification level listed in Table I.

[3] VOC and NO_x are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under §116.150 of this title. As specified in §116.150 of this title, for El Paso County, the NNSR rules apply to sources of VOC, but not to sources of NO_x.

[4] The offset ratio is specified to be greater than 1.00 to 1.

VOC = volatile organic compounds

NO_x = oxides of nitrogen

CO = carbon monoxide

SO_2 = sulfur dioxide

PM_{10} = particulate matter of less than ten microns in diameter

[5] Applies to the NAAQS for nitrogen dioxide (NO_2).

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Clean Air Act and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act and Texas Water Code Settlement Notice. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County and State of Texas v. G and S Construction, Inc.*; Cause No. 2002-27084; In the 164th District Court of Harris County, Texas

Nature of Defendant's Operations: Defendant G and S Construction, Inc. ("G&S") operates a land clearing business in which it uses trench burners to destroy the debris. Inspections held at the G&S work-sites revealed improper use and operation of a trench burner. The violations alleged excessive ash and smoke emissions from the burner, having materials too close to the burner, stacking materials too high in the burner, and failure to maintain some of the required records. On one occasion, G&S burned material on the ground without the use of a trench burner.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction requires Defendant to pay Sixteen Thousand Dollar ($16,000.00) in civil penalties to be split equally between Harris County and the State of Texas, Two Thousand Dollars ($2,000.00) in attorney fees to be split equally between Harris County and the State of Texas, and all costs of court. The Judgment will be paid in six monthly installments of Three Thousand Dollars ($3,000.00) each Defendant is to operate under compliance as set forth in the injunctive relief.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact A.G. Younger, Agency Liaison, at 512-463-2100.

TRD-200302024
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 26, 2003

♦ ♦ ♦

Texas Clean Air Act Enforcement Action Settlement Notice

Notice is hereby given by the State of Texas of the following proposed settlement of an enforcement lawsuit under the Texas Clean Air Act. Before the State may settle a judicial enforcement action, pursuant to §7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act

Case Title and Court: *United States of America and the State of Texas v. Chevron Phillips Chemical Company, LP.* To be filed in the United States District Court for the Northern District of Texas, Amarillo Division.

Nature of Defendant's Operations: Chevron Phillips Chemical Company, LP owns and operates a chemical plant in Borger, Hutchinson County, Texas, which is the subject of this litigation and proposed settlement.

Proposed Agreed Judgment: The proposed Agreed Final Judgment provides for the payment of a civil penalty in the amount of $600,000 to be split equally between the United States of America and the State of Texas and for the payment of $25,000 in attorney's fees to the State of Texas. No injunctive relief is included because the Defendant corrected all violations subject of this litigation as partial consideration for the settlement.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the proposed judgment, and written comments on the judgment should be directed to Joe Foy, Jr., Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Capitol Station, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, please contact A. G. Younger, Agency Liaison, at 512-463-2110.

TRD-200302023
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 26, 2003

♦ ♦ ♦

Texas Solid Waste Disposal Act and Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed partial resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act and the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that

the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Harris County, Texas, and the State of Texas v. TOPS Organic, L.L.C., d/b/a Copperfield/Cyfair Mulch Supply & Wood Recycling; Oliver Tyson, individually; Larry Cook, individually; Thomas Thurman, individually; and Jerry Cook, Trustee of the Cook Family Trust; Case No. 2002-03134, 281st District Court of Harris County, Texas.

Nature of Defendant's Operations: Defendant Larry Cook was an operator responsible for contributing to the creation of dangerous conditions at the 7800 1/2 Wright Road, Harris County, Texas ("Wright Road Site" or "Site"). The Site was used as a compost facility in violation of the rules of the Texas Commission on Environmental Quality that require a permit or other authorization to store, process, remove, or dispose of municipal solid waste, and that prohibit the collection, storage, transportation, processing, or disposal of municipal solid waste in such a manner as to endanger human health and welfare or the environment.

Proposed Agreed Judgment: The Agreed Interlocutory Judgment and Permanent Injunction requires Defendant Larry Cook to take action necessary to secure the Site's compliance with the rules of the Texas Commission on Environmental Quality, the Texas Solid Waste Disposal Act, and the Texas Water Code. The Agreed Interlocutory Judgment and Permanent Injunction further requires Defendant Larry Cook to pay Forty Two Thousand Five Hundred Dollars and no cents ($42,500.00) in civil penalties, to be divided equally between Harris County and the State of Texas. The judgment further provides that Defendant Larry Cook will pay to the State of Texas attorney's fees in the amount of Two Thousand Five Hundred Dollars and no cents ($2,500.00). Defendant is also required to pay the remaining one-half of the court costs in this lawsuit.

For a complete description of the proposed settlement, the proposed Agreed Interlocutory Judgment and Permanent Injunction with regard to Defendant Larry Cook should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Howard S. Slobodin, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, please contact A.G. Younger, Agency Liaison, at 512-463-2110.

TRD-200302018
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 26, 2003

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Texas Solid Waste Disposal Act and Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed partial resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act and the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Harris County, Texas, and the State of Texas v. Tops Organic, L.L.C., d/b/a Copperfield/Cyfair Mulch Supply & Wood Recycling; Oliver Tyson, individually; Larry Cook, individually; Thomas Thurman, individually; and Jerry Cook, Trustee of the Cook Family Trust; Case No. 2002-03134, 281st District Court of Harris County, Texas.

Nature of Defendant's Operations: Defendant Tops Organic, LLC, was the principal operator responsible for creating dangerous conditions at the 7800 1/2 Wright Road, Harris County, Texas ("Wright Road Site"). The Site was used as a compost facility in violation of the rules of the Texas Commission on Environmental Quality that require a permit or other authorization to store, process, remove, or dispose of municipal solid waste, and that prohibit the collection, storage, transportation, processing, or disposal of municipal solid waste in such a manner as to endanger human health and welfare or the environment.

Proposed Agreed Judgment: The Agreed Interlocutory Judgment and Permanent Injunction requires Tops Organic, LLC, to take action necessary to secure the Site's compliance with the rules of the Texas Commission on Environmental Quality, the Texas Solid Waste Disposal Act, and the Texas Water Code. The Agreed Interlocutory Judgment and Permanent Injunction further requires Defendant Tops Organic, LLC, to pay One Hundred Thousand Dollars and no cents ($100,000.00) in civil penalties, to be divided equally between Harris County and the State of Texas.

For a complete description of the proposed settlement, the proposed Agreed Interlocutory Judgment and Permanent Injunction with regard to Defendant Tops Organic, LLC, should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Howard S. Slobodin, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact A.G. Younger, Agency Liaison, at 512-463-2110.

TRD-200302019
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 26, 2003

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following projects(s) during the period of March 14, 2003, through March 20, 2003. The public comment period for these projects will close at 5:00 p.m. on April 25, 2003.

FEDERAL AGENCY ACTIONS:

Applicant: El Paso Production Oil and Gas Company; Location: The proposed project is a 16-inch bulk gas/condensate pipeline that will originate at High Island Block 85, Platform A (Lease OCS-G 21349) and proceed in a northeasterly direction approximately 60,855 feet (11.52 miles) to Tennessee Gas Pipeline's proposed 24-inch Hot Tap (Segment No. 6191), High Island Block 39 Lease OCS-G 4078). Project Description: The proposed project is for a right-of-way (ROW) easement, 200 feet in width, for the construction, maintenance, and operation of a 16-inch bulk gas/condensate ROW pipeline to be installed in and/or through Blocks 85, 74, 46, 38, and 39, High Island, Outer Continental Shelf Federal waters, offshore, Texas. CCC Project No.: 03-0087-F1; Type of Application: Pipeline ROW Application according to MMS Notice to Lessees No. 2002-G15 issued effective December 20, 2002 and in compliance with 15 CFR 930.

FEDERAL AGENCY ACTIVITIES:

Applicant: U.S. Army Corps of Engineers; Location: Gulf Intracoastal Waterway (GIWW)-Port Arthur to High Island, Texas. Project Description: Dredged materials from routine maintenance dredging of this segment of the GIWW are proposed to be used beneficially to help create a berm along the channel to restrict the intrusion of saline water into adjacent fresh- and brackish-water marshes. Additionally, the existing Placement Area No. 4 is proposed to be used such that dredged material is allowed to flow over the rear levee into adjoining marsh to offset effects of subsidence. The proposed plan is being developed at the request of, and in association with the U. S. Fish and Wildlife Service and Texas Parks and Wildlife Department. The proposed beneficial use sites are located along a 17-mile reach of channel within the McFaddin National Wildlife Refuge and J.D. Murphree Wildlife Management Area in Jefferson County. The subject reach of GIWW begins approximately 10 miles west of Port Arthur and ends about nine miles east of High Island. CCC Project No.: 03-0091-F2; Type of Application: The public notice is issued in accordance with the provisions of Federal regulations, Title 33 CFR 337.1 and Title 40 CFR 230, concerning the policy, practice, and procedures to be followed by the U.S. Army Corps of Engineers in connection with disposition of dredged or fill material in navigable waters.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200302033
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: March 26, 2003

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Comptroller of Public Accounts

Notice of Contract Award

Pursuant to Chapter 2162, the Comptroller of Public Accounts on behalf of the State Council on Competitive Government (Council) announces this notice of contract award in connection with the Request for Proposals (RFP #149e) for Digital Imaging Services. The Council announces that a contract is awarded as follows:

Neubus, Inc., 8310 N. Capital of Texas, Suite 288, Austin, Texas 78731. The total contract amount is variable based on use of the contract services by participating state agencies located in Travis County, Texas. The term of the contract is March 25, 2003 through August 31, 2005.

The notice of issuance of this RFP #149e was published in the *Texas Register* on January 24, 2003 at (28 TexReg 780).

TRD-200302026
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: March 26, 2003

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Office of Consumer Credit Commissioner

Notice of Rate Bracket Adjustment

The Consumer Credit Commissioner of Texas has ascertained the following brackets and ceilings by use of the formula and method described in TEX. FIN. CODE §341.203.[1]

The amounts of brackets in TEX. FIN. CODE §342.201(a) are changed to $1,530.00 and $12,750.00, respectively.

The amounts of brackets in TEX. FIN. CODE §342.201(e) are changed at $2,550.00, $5,355.00, and $12,750.00, respectively.

The ceiling amount in TEX. FIN. CODE §342.251 is changed to $510.00.

The amounts of the brackets in TEX. FIN. CODE §345.055 are changed to $2,550.00 and $5,100.00, respectively.

The amounts of the bracket in TEX. FIN. CODE §345.103 is changed to $2,550.00.

The ceiling amount of TEX. FIN. CODE §371.158 is changed to $12,750.00.

The amounts of the brackets in TEX. FIN. CODE §371.159 are changed to $153.00, $1,020.00, and $1,530.00, respectively.

The above dollar amounts of the brackets and ceilings shall govern all applicable credit transactions and loans made on or after July 1, 2003, and extending through June 30, 2004.

[1]Computation method: The Reference Base Index (the Index for December 1967) = 101.6. The December 2002 Index = 527.2. The percentage of change is 518.90%. This equates to an increase of 510% after disregarding the percentage of change in excess of multiples of 10%.

TRD-200301986
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 25, 2003

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 03/31/03 -- 04/06/03 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 03/31/03 -- 04/06/03 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200301985
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 25, 2003

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Texas Commission on Environmental Quality

Correction of Error

Due to a publication error in the March 14, 2003, issue of the *Texas Register*, the titles of two "In Addition" notices submitted by the Texas Commission on Environmental Quality were transposed. The errors occur on pages 2386 and 2391.

On page 2386, first column, the title "Enforcement Orders" should read "Notice of Water Quality Applications" (TRD-200301536).

On page 2391, first column, the title "Notice of Water Quality Applications" should read "Enforcement Orders" (TRD-200301537).

TRD-200302032

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Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit

APPLICATION. The City of Wichita Falls has applied to the Texas Commission on Environmental Quality (TCEQ) for a major permit amendment for the City of Wichita Falls Landfill, a Type I municipal solid waste landfill. The facility is located approximately 3 miles west of the city limits of the city of Wichita Falls, about 2 miles north of State Highway 258 on Wylie Road, and about 2.5 miles south of the city of Iowa Park in Wichita County, Texas. This application was submitted on July 10, 2002. The permit application is available for viewing and copying at the offices of the Public Works Department, City of Wichita Falls located at 1300 7th Street in Wichita Falls, Texas. The TCEQ executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue this draft permit.

MAILING LISTS. You may ask to be placed on a mailing list to obtain additional information regarding this application by sending a request to the Office of the Chief Clerk at the address below. You may also ask to be on a county-wide mailing list to receive public notices for TCEQ permits in the county.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comment or to ask questions about the application. The TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing. You may submit additional written public comment to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date of newspaper publication of this notice.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comments may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the permit and will forward the application and requests to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Further information about the application may also be obtained from Mr. John S. Taylor, Director of Public Works, City of Wichita Falls, P.O. Box 1431, Wichita Falls, TX 76307 or by calling Mr. John Taylor at (940) 761-7477.

TRD-200302000
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 25, 2003

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Notice of Public Hearing

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed amended and new sections of 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants. This notice is given under the requirements of the Texas Government Code, Subchapter B, Chapter 2001.

The proposed rulemaking would incorporate by reference United States Environmental Protection Agency (EPA) rules made concerning national emission standards for hazardous air pollutants (NESHAP) for source categories in implementation of the 1990 Amendments to the Federal Clean Air Act.

These NESHAP standards are technology-based standards commonly referred to as the maximum achievable control technology (MACT) standards. The rulemaking will add 18 new MACT subparts, and update 34 MACT subparts previously adopted by the commission by updating the federal promulgation dates cited in the commission rules.

A public hearing on this proposal will be held in Austin on April 28, 2003, at 10:00 a.m. in Building F, Room 2210 of the commission's central office, located at 12100 Park 35 Circle, Austin, Texas 78753.

Individuals may present oral or written statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing, and will answer questions before and after the hearing.

Comments may be submitted to Angela Slupe, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-036a-113-AI. Comments must be received by 5:00 p.m., May 5, 2003. For further information, please contact Alan Henderson, Regulation Development Section, at (512) 239-1510.

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

TRD-200301877
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 21, 2003

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 116 and the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive comments concerning revisions to 30 TAC Chapter 116, specifically the repeal of §116.170; amended §§116.12, 116.114 - 116.116, 116.143, 116.150, 116.313, 116.315, and 116.715; and new §§116.120, 116.170, and 116.172, and corresponding revisions to the state implementation plan (SIP), under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency regulations concerning SIPs.

The proposed revisions to Chapter 116 would require emission reductions be certified as offsets under Chapter 101, Subchapter H, retaining Chapter 116 as a future internal offset certification method, ensure timely submission of updated and additional information used to process new source review applications including the establishment of a voidance process, require an application for permit renewal to be submitted at least six months but no earlier than 18 months prior to the permit expiration date, and allow an additional 18 months before voiding a permit to begin construction of authorized projects for delays caused by third party litigation or other specific reasons.

A public hearing on this proposal will be held in Austin on April 24, 2003 at 10:00 a.m. in Building F, Room 3202A at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

Comments may be submitted to Joyce Spencer, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2003-003-116-AI, and must be received by 5:00 p.m., May 5, 2003. For further information, please contact Clifton Wise, Policy and Regulations Division at (512) 239-2263.

TRD-200301867
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 21, 2003

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Notice of Water Quality Applications

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

RAY ANDERSON has applied for a new permit, Proposed Permit No. 14397-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day via drip irrigation with a minimum area of 120,000 square feet. The facility and disposal site are located 1.3 miles south of the intersection of State Highway 27 and Farm-to-Market Road 480 on Farm-to-Market Road 480 in Kerr County, Texas.

AQUASOURCE UTILITY, INC. has applied for a renewal of TPDES Permit No. 11701-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located on Sulphur Gully, approximately one-half mile north of Wallisville Road and one mile east of C.E. King Parkway in Harris County, Texas.

CITY OF BLUE RIDGE has applied for a renewal of TPDES Permit No. 10039-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day. The facility is located approximately 0.5 mile southeast of the intersection of Farm-to-Market Road 545 and Farm-to-Market Road 1377 in Collin County, Texas.

C & R WATER SUPPLY, Inc. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14285-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located 3,000 feet south of a point on State Highway 105, which is 2,000 feet east of the Crockett- Martin Road in Montgomery County, Texas. The treated effluent is discharged to drainage ditches; thence to Milam Branch Fork; thence to Spring Branch; thence to Caney Creek in Segment No. 1010 of the San Jacinto River.

EAST MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 3 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14379- 001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility will be located approximately 11,000 feet west of the intersection of Farm-to-Market Road 1485 and Tree Monkey Road in Montgomery County, Texas.

ESPERANZA WATER SERVICE COMPANY, INC., which operates a reverse osmosis water treatment plant, has applied for a renewal of Permit No. 03807, which authorizes the disposal of reverse osmosis

reject water via six evaporation/percolation beds and one storage bed at a daily average flow not to exceed 10,000 gallons per day. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal area are located on the north side of State Highway 20, approximately 4.5 miles southeast of the City of Fort Hancock, Hudspeth County, Texas.

HUMBLE PARTNERS LIMITED PARTNERSHIP has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 11161-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility is located approximately 1,000 feet east of the intersection of Atascocita Road and Old Humble Road in Harris County, Texas.

LAJITAS UTILITY COMPANY, INC. has submitted application for a new permit, Proposed Permit No. 04489, to authorize the land application of sewage sludge for beneficial use on 10.8 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located approximately 11,000 feet west-northwest of the Rio Grande River and 3,000 feet south of Ranch-to-Market Road 170, approximately 1.3 miles southeast of Lajitas in Brewster County, Texas.

JEFFREY EDWIN MARTINDALE, has submitted application for a new permit, Proposed Permit No. 04530, to authorize the land application of sewage sludge for beneficial use on 25 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located on County Road 138, approximately 0.75 mile west of the intersection of County Road 138 and Farm-to-Market Road 777, approximately 7.5 miles west of the City of Jasper in Jasper, County Texas in Jasper County, Texas.

CITY OF MENARD has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10345-002, to authorize the discharge of filter backwash water at a daily average flow not to exceed 94,000 gallons per day. The facility will be located on Farm-to-Market Road 2092, approximately 1 mile west of the intersection of U.S. Highway 83 and Farm-to-Market Road 2092 in Menard County, Texas.

NORIT AMERICAS, INC., which operates an activated carbon manufacturing plant, has applied for a renewal of TPDES Permit No. 00703, which authorizes the discharge of treated process wastewater, utility wastewater, and storm water via Outfall 001 at a daily average flow not to exceed 2,000,000 million gallons per day; and the discharge of treated process wastewater, utility wastewater, and storm water via Outfall 002 at a daily average flow not to exceed 2,000,000 million gallons per day. The draft permit authorizes the discharge of treated process wastewater, utility wastewater, and storm water via Outfall 002 at a daily average flow not to exceed 2,000,000 million gallons per day. The facility is located on the west end of University Avenue, approximately 1300 feet west of the intersection of University Avenue and Martin Luther King Jr. Boulevard, on the southwest edge of the City of Marshall, Harrison County, Texas.

RA-TE, INC. has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 13017-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility will be located approximately 2,200 feet southwest of the intersection of Smith Road and Kidd Road in Jefferson County, Texas.

CITY OF ROMA has applied for a renewal of TPDES Permit No. 11212-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 900 feet south of U.S. Highway 83, approximately 4,900 feet southeast of the itersection of U.S. Highway 83 and the U.S. Customs Toll Bridge Road in Starr County, Texas.

SYNAGRO OF TEXAS-CDR, INC., as submitted application for a new permit, Proposed Permit No. 04504, to authorize the land application of sewage sludge for beneficial use on 475.7 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located 7 miles north of Paynor, on Farm-to-Market Road 315 at the Bill Miller Tree Farm in Henderson County, Texas.

U.S. DEPARTMENT OF THE NAVY, which operates the Corpus Christi Naval Air Station Industrial Waste Treatment Plant, has applied for a renewal of TPDES Permit No. 02317, which authorizes discharge of treated sanitary wastewater, utility wastewater, and previously monitored effluents (PMEs) at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 001; and process wastewater, treated groundwater, utility wastewater, and sanitary wastewater at a daily average flow not to exceed 500,000 gallons per day via Outfall 101. The facility is located at 8851 Ocean Drive, at the Corpus Christi Naval Air Station, on the south side of Corpus Christi Bay between Oso Bay and Laguna Madre, on the north end of the Encinal Peninsula, and east of the City of Corpus Christi, Nueces County, Texas.

VARCO, L.P., which operates a drill pipe and oilfield cleaning and coating plant, has applied for a renewal of TPDES Permit No. 02104 which authorizes the discharge of compressor aftercooler water, compressed air condensate, wash water from pipe coating operations and storm water at a daily average flow not to exceed 36,000 gallons per day via Outfall 001. he facility is located at 12100 West Little York Road, approximately one mile southwest of the intersection of U.S. Highway 290 and State Route 529 in the City of Houston, Harris County, Texas.

RICHARD ALLEN VERRY has applied for a renewal of TPDES Permit No. 12310-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located adjacent to and east of Horsepen Bayou; approximately 1,500 feet south of the intersection of Farm-to-Market Road 529 and Jackrabbit Road in Harris County, Texas.

TRD-200301999
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 25, 2003

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Notice of Water Rights Application

Application No. 08-2410E; North Texas Municipal Water District (District), Applicant, P.O. Box 2408, Wylie, Texas 75098, seeks to amend Certificate of Adjudication No. 08-2410, as amended, pursuant to 11.122, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Certificate of Adjudication No. 08-2410, as amended, currently authorizes the District to impound 380,000 acre-feet of water in Lake Lavon, which is owned by the United States Army Corps of Engineers, and to divert and use from Lake Lavon:(a) Not to exceed 100,000 acre-feet of water per annum for municipal purposes,(b) Not to exceed 4,000 acre-feet of water per annum for industrial purposes,(c) Not to exceed an additional 77,300 acre-feet of water per annum for municipal purposes by over-drafting the firm yield of Lake Lavon when Lake Ray Hubbard is at maximum conservation level and spilling or whenever additional water (up to 77,300 acre-feet per annum) is supplied from Lake Texoma to Lake Lavon pursuant to Water Use Permit No. 5003, and(d) Not to exceed 35,941 acre-feet of water per annum discharged into Lake Lavon from the District's Wilson Creek Wastewater Treatment Plant (WCWWTP) for municipal purposes. A special condition in the current Certificate

of Adjudication No. 08-2410, as amended, provides that the total consumptive use of water for municipal purposes authorized by said water right, and Water Use Permit No. 5003, shall not exceed 177,300 acre-feet of water per annum. The District also has the right to consume all of the 4,000 acre-feet per annum of industrial use water allocation. Certificate of Adjudication No. 08-2410, as amended, contains several priority dates, special conditions and diversion rates. Pursuant to Certificates of Adjudication Nos. 03-4797, as amended, and 03-4798, Applicant is authorized to divert and use not to exceed 3,214 and 54,000 acre-feet of water per year, respectively, from Lake Chapman in the Sulphur River Basin.

Applicant seeks to amend Certificate of Adjudication No. 08-2410, as amended, to:(a)Authorize an increase in the District's reuse authorization from Lake Lavon of effluent discharged from the WCWWTP to the lake from 35,941 acre-feet of water per annum to 71,882 acre-feet of water per annum (a total increase of 35,941 acre-feet), or as much thereof per annum as may actually be discharged into Lake Lavon from the WCWWTP pursuant to an authorized increase in the amount of effluent discharged; and(b)Recognize the District's authority to divert, pursuant to Certificates of Adjudication Nos. 03-4797, as amended, and 03-4798, an additional 3,214 and 54,000 acre-feet of water per annum (total of 57,214 acre-feet), respectively, from Lake Chapman in the Sulphur River Basin, for municipal purposes within the Applicant's service area; and (c)Authorize the District to divert an additional 57,214 acre-feet of water per annum from Lake Lavon for municipal purposes by either over-drafting the firm yield of Lake Lavon during times when Lake Ray Hubbard is at maximum conservation and spilling or when water is supplied from Lake Chapman pursuant to Certificates of Adjudication Nos. 03-4797, as amended, and 03-4798; and(d) Authorize the use of up to 4,000 acre-feet of water per year previously authorized for industrial use by the Certificate for industrial and municipal purposes; and(e)Increase the total consumptive authorization for water allocated for municipal use from 177,300 acre-feet to 234,514 acre-feet per annum based on the District's rights in Lakes Lavon, Lake Texoma, and Lake Chapman. The Applicant is not requesting a change in the diversion rate of the water authorized. The amendment application was received on August 30, 2002, and additional information was received October 31, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200302001
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 25, 2003

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Houston-Galveston Area Council

Public Meeting Notice

Public Comment Period Open for Amendments to the 2022 Metropolitan Transportation Plan (MTP) and the 2002-2004 Transportation Improvement Program (TIP)

A public meeting was held on Tuesday, March 18, 2003, at the Houston-Galveston Area Council (H-GAC) on proposed amendments to the 2022 Metropolitan Transportation Plan (MTP) and the 2002-2004 Transportation Improvement Program (TIP). The public is encouraged to provide comments to H-GAC on the following proposed amendments:

* Addition of project to add 600 spaces to the Fuqua Park and Ride lot.

* Cancellation of Congestion Mitigation and Air Quality Improvement Program projects in Brazoria, Galveston and Harris counties totaling $14.3 million.

The public comment period on the amendments begins **Sunday, March 9, 2003**. All comments must be received by H-GAC no later than **5 p.m., Monday, April 7, 2003**. To obtain more detailed information, please visit **www.h-gac.com/HGAC/Departments/Transportation/default.htm** or call Pat Waskowiak, Transportation Senior Planner, at (713) 993-2456. Copies of the proposed amendments will also be available at the meeting. Written comments may be submitted to Pat Waskowiak, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227, e-mailed to patricia.waskowiak@h-gac.com or faxed to (713) 993-4508.

In compliance with the Americans with Disabilities Act, H-GAC will provide for reasonable accommodations for persons with disabilities attending H-GAC functions. Requests should be received by H-GAC 24 hours prior to the function. Call Pat Waskowiak at (713) 993-2456 to make arrangements.

TRD-200301984
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: March 25, 2003

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Request for Proposals

The Houston-Galveston Area Council (H-GAC) is requesting proposals to conduct an access management and traffic mobility study for the FM 518 corridor from US 288 in Brazoria County to SH 146 in Galveston County. The purpose of the study is to identify short-term transportation improvements to improve traffic flow and reduce motorist

delay. The study will collect sufficient information to measure and evaluate a range of viable short-term improvement concepts, as well as address cost-benefit and cost-effectiveness of various solutions. The study shall conclude with the identification of a list of recommended improvements and ways to implement them, including time frame and funding sources.

Submittals are due by **3 p.m. on Tuesday, April 15, 2003**. Twelve typewritten, bound/stapled and signed copies of the proposal are required. Late proposals will **NOT** be accepted.

The Request for Proposal packet can be downloaded from the H-GAC Transportation Department Web site at **www.h-gac.com/HGAC/Home/RFP/default.htm**. Interested firms may also obtain the packet at the H-GAC offices at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, or by contacting Jerry L. Bobo at (713) 993-4571. All questions regarding the Request for Proposal can be sent to the attention of Jerry L. Bobo by e-mail to jerry.bobo@h-gac.com, faxed to (713) 993-4508, or mailed to the Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227-2227.

TRD-200301895
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: March 24, 2003

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Request for Proposals

The Houston-Galveston Area Council (H-GAC) is requesting proposals to conduct an access management and traffic mobility study for the FM 1960 corridor from west of SH 249 to east of IH 45 in Harris County (about 7.1 miles). The purpose of the study is to identify short-term transportation improvements to improve traffic flow and reduce motorist delay. The study will collect sufficient information to measure and evaluate a range of viable short-term improvement concepts, as well as address cost-benefit and cost-effectiveness of various solutions. The study shall conclude with the identification of a list of recommended improvements and ways to implement them, including time frame and funding sources.

A Pre-Proposal Conference is scheduled at **3 p.m. on Monday, April 14, 2003,** at H-GAC in Conference Room A on the second floor. Submittals are due by **3 p.m. on Tuesday, May 7, 2003.** Twelve (12) typewritten, bound/stapled and signed copies of the proposal are required. Late proposals will **NOT** be accepted.

The Request for Proposal packet can be downloaded from the H-GAC Transportation Department Web site at **www.h-gac.com/HGAC/Home/RFP/default.htm.**

Interested firms may also obtain the packet at the H-GAC offices at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, or by contacting Jerry L. Bobo at 713-993-4571. All questions regarding the Request for Proposals can be sent to the attention of Jerry L. Bobo by email to jerry.bobo@h-gac.com, faxed to 713-993-4508, or mailed to the Houston-Galveston Area Council, P.O. Box 22777, Houston, TX 77227-2227.

TRD-200302020
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: March 26, 2003

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Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by U.S. LEGAL SERVICES OF TEXAS, INC., a foreign prepaid legal company. The home office is in Jacksonville, Florida.

Application to change the name of SUMITOMO MARINE & FIRE INSURANCE COMPANY OF AMERICA to MITSUI SUMITOMO INSURANCE COMPANY OF AMERICA, a foreign fire and/or casualty company. The home office is in New York, New York.

Application to change the name of MITSUI MARINE & FIRE INSURANCE COMPANY OF AMERICA to MITSUI SUMITOMO INSURANCE COMPANY USA INC., a foreign fire and/or casualty company. The home office is in New York, New York.

Application to change the name of WESTERN DIVERSIFIED LIFE INSURANCE COMPANY to AMERICAN SPECIALTY HEALTH INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Rosemont, Illinois.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200301828
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 19, 2003

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Company Licensing

Application to change the name of HOMEPLUS INSURANCE COMPANY to SECURIAN CASUALTY COMPANY, a foreign fire and/or casualty company. The home office is in St. Paul, Minnesota.

Application for admission to the State of Texas by HUDSON INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200302021
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 26, 2003

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Notice of Application to Decrease the Texas Stamping Office Fee

The Directors of the Surplus Lines Stamping Office of Texas have approved a motion requesting the Commissioner of Insurance to authorize a decrease in the stamping fee rate to 0.10% (0.0010) from its current rate of 0.15% (0.0015), pursuant to the Plan of Operation of the Surplus Lines Stamping Office of Texas under 28 Texas Administrative Code §15.101(e)(3). The proposed effective date for the decrease is July 1, 2003. This request is now before the Commissioner of Insurance and is under consideration.

The Surplus Lines Stamping Office of Texas was created in 1987 and is a non-profit corporation subject to the supervision of the Commissioner of Insurance. The Stamping Office monitors the sale of surplus lines insurance policies and evaluates the eligibility of surplus lines insurers that write surplus lines insurance in Texas. Pursuant to Article 1.14-2, §6A of the Texas Insurance Code, the Stamping Office has petitioned the Commissioner of Insurance for a decrease in the stamping fee charged by the Stamping Office on the gross premium resulting from surplus lines contracts. The petition requests that the fee be decreased by 0.05%, beginning July 1, 2003, from 0.15% to 0.10%.

A copy of the petition, is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. A-0303-09).

Any comments on the decrease must be submitted in writing no later than 5:00 p.m. on May 1, 2003 to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted simultaneously to Betty Patterson, Senior Associate Commissioner of the Financial Program, Texas Department of Insurance, P.O. Box 149104, M/C 305-2A Austin, Texas 78714-9104.

TRD-200301865
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 21, 2003

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Texas Lottery Commission

Instant Game No. 341 "Extreme Green"

1.0 Name and Style of Game.

A. The name of Instant Game No. 341 is "EXTREME GREEN". The play style in Game 1 is "match three". The play style in Game 2 is "key symbol match with auto win". The play style in Game 3 is "match three". The play style in Game 4 is "key symbol match with auto win". The play style in Game 5 is "key symbol match". The play style in Game 6 is "key symbol match". The play style in Game 7 is "row, column, diagonal". The play style in Game 8 is "key symbol match". The play style in Game 9 is "row, column, diagonal". The play style in Game 10 is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 341 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 341.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $5.00, $10.00, $15.00, $20.00, $50.00, $100, $1,000, $10,000, $100,000, STAR SYMBOL, PIGGY BANK SYMBOL, HAPPY FACE SYMBOL, FROG SYMBOL, CLOVER SYMBOL, SUN SYMBOL, HEADS SYMBOL, TAILS SYMBOL, CACTUS SYMBOL, WALLET SYMBOL, STACK OF COINS SYMBOL, STACK OF BILLS SYMBOL, HORSESHOE SYMBOL, CHIPS SYMBOL, MONEY BAG SYMBOL, POT OF GOLD SYMBOL, GOLD BAR SYMBOL, X SYMBOL, [ ] SYMBOL, DOLLAR SIGN SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 341 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$10,000	TEN THOU
$100,000	100 THOU
STAR SYMBOL	STAR
PIGGY BANK SYMBOL	PBANK
HAPPY FACE SYMBOL	HAPPY
FROG SYMBOL	FROG
CLOVER SYMBOL	CLOVER
SUN SYMBOL	SUN
HEADS SYMBOL	HEAD
TAILS SYMBOL	TAILS
CACTUS SYMBOL	CACTUS
WALLET SYMBOL	WALLET
STACK OF COINS SYMBOL	AUTO
STACK OF BILLS SYMBOL	BILLS
HORSESHOE SYMBOL	AUTO
CHIP SYMBOL	WIN $5
DIAMOND SYMBOL	DIAMD
MONEY BAG SYMBOL	MBAG
POT OF GOLD SYMBOL	GLD
GOLD BAR SYMBOL	AUTO
X SYMBOL	
[ ] SYMBOL	
DOLLAR SIGN SYMBOL	

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 341 - 1.2E

CODE	PRIZE
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $10.00, $15.00, $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, $250, $500.

I. High-Tier Prize - A prize of $1,000, $10,000, $100,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (341), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 341-0000001-000.

L. Pack - A pack of "EXTREME GREEN" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074 while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "EXTREME GREEN" Instant Game No. 341 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "EXTREME GREEN" Instant Game is determined once the latex on the ticket is scratched off to expose 58 (fifty-eight) play symbols. In Game 1, if the player gets three (3) like dollar amounts, the player will win that amount. In Game 2, if the player gets two (2) star symbols, the player will win the prize shown. If the player gets a stack of coins symbol, the player will win the prize automatically. In Game 3, if the player gets three (3) like dollar amounts, the player will win that amount. In Game 4, if the player gets two (2) stack of bills symbols, the player will win the prize shown. If the player gets a horseshoe symbol, the player will win the prize automatically. In Game 5, if the player gets two (2) chips symbols, the player will win $5 instantly. In Game 6, if the player gets two (2) diamond symbols in the same play, the player will win the prize for that play. In Game 7, if the player gets three X's in any one row, column or diagonal, the player will win the prize shown. In Game 8, if the player gets two moneybag symbols in the same play, the player will win the prize for that play. In Game 9, if the player gets three (3) dollar signs in any one row, column or diagonal, the player will win the prize shown. In Game 10, if the player gets two (2) pot of gold symbols, the player will win the prize shown. If the player gets a gold bar symbol, the player will win the prize automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 58 (fifty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 58 (fifty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 58 (fifty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 58 (fifty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Although not all prize symbols can be won in each game, all prize symbols may be used in non-winning locations.

C. Game 1 & 3: No 4 or more of a kind.

D. Game 1 & 3: No three or more pairs.

E. Game 2: No matching symbols except for the "star" on intended winners.

F. Game 4: No matching symbols except for the "stack of bills" on intended winners.

G. Game 5: No matching symbols except for the "chips" on intended winners.

H. Game 6: No matching symbols except for the "diamond" on intended winners.

I. Game 6: No duplicate non-winning prize amounts for this game.

J. Game 7: Every ticket will contain at least four "X" symbols.

K. Game 7: No occurrence of three symbols in a row, column or diagonal except the "X".

L. Game 8: No matching symbols except for the "moneybag" on intended winners.

M. Game 8: No duplicate non-winning prize amounts for this game.

N. Game 9: Every ticket will contain at least four "dollar sign" symbols.

O. Game 9: No occurrence of three symbols in a row, column or diagonal except the "dollar sign".

P. Game 10: No matching symbols except for the "pot of gold" on intended winners.

2.3 Procedure for Claiming Prizes.

A. To claim an "EXTREME GREEN" Instant Game prize of $10.00, $15.00, $20.00, $50.00, $100, $250, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, $250, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim an "EXTREME GREEN" Instant Game prize of $1,000, $10,000, or $100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming an "EXTREME GREEN" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "EXTREME GREEN" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "EXTREME GREEN" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,153,125 tickets in the Instant Game No. 341. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 341 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10	1,162,887	3.57
$15	221,424	18.76
$20	332,301	12.50
$50	83,027	50.02
$100	33,652	123.41
$250	6,917	600.42
$500	3,481	1,193.08
$1,000	64	64,892.58
$10,000	18	230,729.17
$100,000	4	1,038,281.25

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.25. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 341 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 341, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director. 4

TRD-200301981
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 24, 2003

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Texas Department of Protective and Regulatory Services

Child and Family Services Plan

The Texas Department of Protective and Regulatory Services (PRS) is developing the annual update of the Child and Family Services Plan for the State of Texas. The plan covers the five-year period from October 1, 1999, through September 30, 2004. Under guidelines issued by the U. S. Department of Health and Human Services and the Administration for Children and Families, PRS, as the designated agency to administer Title IV-B programs in the state of Texas, is required to review the progress made in the previous year toward accomplishing the goals, objectives, strategies, and action steps identified in the state's five- year plan.

The Child and Family Services Plan annual update is required for the states to receive their allotment for fiscal year 2004 authorized under Title IV-B of the Social Security Act, Subparts 1 and/or 2, and the Child Abuse Prevention and Treatment Act (CAPTA). The update also gives states an opportunity to apply for fiscal year 2004 funds for the Chafee Foster Care Independence Program. To receive funds for fiscal year 2004, the annual update referenced above must be submitted by June 30, 2003.

The purpose of this notice is to advise the public of the development of the required annual update and to solicit feedback or input regarding the goals, objectives, strategies, and action steps identified in the state's five-year plan. Members of the public can obtain more detailed information regarding the Child and Family Services Plan for the State of Texas from the PRS web site at: http://www.tdprs.state.tx.us

Interested persons who do not have access to the Internet and would like to receive a written copy of information concerning this proposal may contact: Max Villarreal, Texas Department of Protective and Regulatory Services; P.O. Box 149030; MC E-558; Austin, Texas 78714-9030; Phone: (512) 438-5443; Fax: (512) 438-3782.

Written comments regarding the proposal may be faxed or mailed to the above individual and must be received no later than May 15, 2003.

TRD-200302027
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: March 26, 2003

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Correction of Error

The Texas Department of Protective and Regulatory Services (PRS) adopted new Chapter 746, Minimum Standards for Child Care Centers, and new Chapter 747, Minimum Standards for Child Care Homes, in the February 14, 2003, issue of the *Texas Register* (28 TexReg 1402). Sections 746.1203, 746.1603, 746.3301, and 747.5407 contained errors as submitted.

Section 746.1203 was inadvertently adopted with changes (page 1440). As the briefing chart presented to the Board and the response to comments in the preamble make clear, however, the Board's intent was to adopt §746.1203 as originally proposed. Therefore we are adding paragraph (6) and renumbering the remaining paragraphs to appear as proposed:

"(6) Be free from duties not directly involving the teaching, care, and supervision of children, such as:"

"(A) Administrative and clerical functions that take the caregiver's attention away from the children;"

"(B) Meal preparation, except when 12 or fewer children are in care; and"

"(C) Janitorial duties, such as mopping, vacuuming, and cleaning restrooms. Sweeping up after an activity or mopping up spills may be necessary for the children's safety and are not considered janitorial duties;"

"(7) Interact routinely with children in a positive manner;"

"(8) Foster developmentally appropriate independence in children through planned but flexible program activities;"

"(9) Foster a cooperative rather than a competitive atmosphere;"

"(10) Show appreciation of children's efforts and accomplishments; and"

"(11) Ensure continuity of care for children by sharing with incoming caregivers information about each child's activities during the previous shift and any verbal or written instructions given by the parent."

Section 746.1603 was adopted without change and was not republished; however a change is needed to correct a mistake in terminology. Specifically, after publication it was discovered that use of the term "rounding down," when calculating the "core number" for group sizes, would result in an unintended change in child/staff ratios. In order to effectuate the Board's actual intent that the formula be designed to maintain the same child/staff ratios as were in effect prior to the adoption of this rule change, the formula must use the term "round up" in place of "round down." Accordingly, PRS is correcting the text of §746.1603 to read:

"§746.1603. How do I determine the specified age of the children in each group?"

"Identify the specified age of the children in each group using this formula:"

"(1) List all of the children in the group in order of their ages from youngest to oldest. Children younger than 24 months should be listed by their age in months. Children two years and older are listed by their age in years."

"(2) Determine the total number of children in the group and divide this number by two. If the result is not a whole number but is .5, such as 6.5, round up to the next number, which is 7. This will be the core number of the group."

"(3) Begin counting at the first or youngest child on your list and count down the list from youngest to oldest, until you reach the core number. The age of this child is the specified age of the children in this group. "

On page 1450, §746.3301(a)(3) contained a typographical error, and is corrected to read:

"(3) If your child-care center is participating in the Child and Adult Care Food Program (CACFP) administered by the Texas Department of Human Services, you may elect to meet those requirements rather than those specified in this subsection."

Previously it referred to "your child-care home."

On page 1520, the first sentence in §747.5407 contained typographical errors, and is corrected to read:

"For vehicles other than a bus with a GVWR of 10,000 pounds or more, you must secure each child in an infant safety seat, child booster seat, or a seat belt, as appropriate to the child's age, height, and weight according to manufacturers' instructions before starting the vehicle, and during all times the vehicle is in motion."

TRD-200302038

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Public Utility Commission of Texas

Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On March 14, 2003, Masergy Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60502. Applicant intends to relinquish its certificate.

The Application: Application of Masergy Communications, Inc. for Relinquishment of its Service Provider Certificate of Operating Authority, Docket Number 27510.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 9, 2003. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 27510.

TRD-200301826
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 19, 2003

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On March 14, 2003, Grande River Communications, L.P. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60305. Applicant intends to relinquish its certificate.

The Application: Application of Grande River Communications, L.P. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 27512.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 9, 2003. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 27512.

TRD-200301827
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 19, 2003

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on February 14, 2003, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C, of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Point Exchange for Expanded Local Calling Service, Project Number 27389.

The petitioners in the Point exchange request ELCS to the exchange of Terrell.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512)936-7120 or toll free at 1-888-782-8477 no later than April 21, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 27389.

TRD-200301983
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2003

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Public Notice of Amendment to Interconnection Agreement

On March 19, 2003, Southwestern Bell Telephone, L.P. doing business as SBC Texas and Sage Telecom of Texas, L.P., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27519. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the

applicants. The comments should specifically refer to Docket Number 27519. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by April 16, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27519.

TRD-200301970
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2003

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Public Notice of Amendment to Interconnection Agreement

On March 19, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Pathwayz Communications, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27520. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27520. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by April 16, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27520.

TRD-200301971
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2003

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Public Notice of Amendment to Interconnection Agreement

On March 20, 2003, Southwestern Bell Telephone, L.P. doing business as SBC Texas and Westex Communications, L.L.C. doing business as WTX Communications, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104- 104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27528. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27528. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by April 16, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27528.

TRD-200301972
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2003

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Public Notice of Amendment to Interconnection Agreement

On March 20, 2003, Southwestern Bell Telephone, L.P. doing business as SBC Texas and AMA Communications, L.L.C. doing business as AMA*TechTel Communications, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104- 104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27529. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27529. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by April 16, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27529.

TRD-200301973
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2003

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Public Notice of Interconnection Agreement

On March 18, 2003, Southwestern Bell Telephone, L.P. doing business as SBC Texas and Amerimex Communications Corporation, collectively referred to as applicants, filed a joint application for approval to adopt the rates, terms, and conditions of a previously-approved interconnection agreement adopted pursuant to the §252(e) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47

United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27517. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27517. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by April 16, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27517.

TRD-200301969
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2003

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Public Notice of Interconnection Agreement

On March 20, 2003, Cumby Telephone Cooperative, Inc. and Nextel Communications, Inc. doing business as Nextel of Texas, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27531. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27531. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by April 16, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27531.

TRD-200301974
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2003

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Public Notice of Interconnection Agreement

On March 20, 2003, Valor Telecommunications of Texas, L.P. and Sprint Spectrum, L.P., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number

104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27532. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27532. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by April 16, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27532.

TRD-200301975
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2003

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Public Notice of Interconnection Agreement

On March 20, 2003, Valor Telecommunications of Texas, L.P. and Plateau Telecommunications, Incorporated doing business as Plateau Wireless, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27533. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27533. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by April 16, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27533.

TRD-200301976
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2003

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Public Notice of Interconnection Agreement

On March 20, 2003, Cumby Telephone Cooperative, Incorporated and Nextel Communications, Inc. doing business as Nextel of Texas, Incorporated, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27534. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27534. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by April 16, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27534.

TRD-200301977
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2003

♦ ♦ ♦

Public Notice of Workshop on Amendments to §25.482, relating to Termination of Contract, and §25.483, relating to Disconnection of Service

The Public Utility Commission of Texas (commission) will hold a workshop regarding amendments to Substantive Rule §25.482, relating to Termination of Contract, and Substantive Rule §25.483, relating to Disconnection of Service, on Monday, April 14, 2003, at 9:30 a.m. in the Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 27084, *PUC Rulemaking to Revise Customer Protection Rules*, has been established for this proceeding.

The commission requests that interested parties submit draft rule language and respond to the following questions prior to the workshop:

1. What amendments should be made to §25.482, relating to Termination of Contract, to clarify customer rights, notice requirements and procedures regarding termination of contracts? Please provide recommendations for specific language.

2. What amendments should be made to §25.483, relating to Disconnection of Service, to clarify customer rights, notice requirements and procedures regarding disconnection and reconnection of electric service? Please provide recommendations for specific language.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, due by April 7, 2003. All responses should reference Project Number 27084. Parties are also asked to send a copy of filed documents to the project electronic mailing list at CUSTRULE@puc.state.tx.us.

Prior to the workshop the commission will make available in Central Records under Project Number 27084 an agenda for the format of the workshop. Copies of the agenda will also be available on the Commission's website at www.puc.state.tx.us.

Questions concerning the workshop or this notice should be referred to Carrie Collier, Analyst-Retail Market Oversight, Electric Division, at (512) 936-7163. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200301982
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2003

♦ ♦ ♦

Office of the Secretary of State

Correction of Error

In the March 14, 2003, issue of the *Texas Register* (28 TexReg 2303), the Office of the Secretary of State published an adopted rulemaking notice for 1 TAC §73.43 and §73.44. The third paragraph of the preamble states that no comments were received regarding the proposed amendments. In fact, the SOS received a comment on the proposal that we failed to address in the adopted rulemaking notice.

The commenter submitted a letter that states:

"In section 73.43, I suggest that the reference to 'Vernon's Annotated Texas Constitution, Article 16, §1(b)' be changed to 'Texas Constitution, article XVI, §1(b)'. First, it is unnecessary for the state to refer to a private publisher's copyrighted version of the Texas Constitution. Second, for better or worse, the numbering of the articles in the constitution is in Roman numerals, not Arabic.

"For what it's worth, it is the legislature's practice to both (1) refer to the constitution without citation to the version published by the West Group and (2) use Roman, rather than Arabic, numbers."

The Office of the Secretary of State agrees with the comment and will change the statutory citation when the rule is next amended.

TRD-200302036

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Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.dot.state.tx.us

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200301841
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 20, 2003

♦ ♦ ♦

Texas Workers' Compensation Commission

Correction of Error

The Texas Workers' Compensation Commission (TWCC) published proposed amendments to 28 TAC §180.3 and §180.15 in the March 14, 2003 issue of the *Texas Register* (28 TexReg 2246). The published proposals contain errors as submitted.

In the preamble - page 2257, left column, paragraph beginning with "The rule provides for another adjustment..." The multiplication sign and the division sign were omitted. In this paragraph, the fifth sentence should read as follows:

"Mathematically, this formula reads (Base Penalty x PIE) ÷ AWW."

In the preamble - page 2257, left column, paragraph beginning with "Finally, benefits are usually paid weekly..." In this paragraph the third sentence should read as follows:

"Therefore, the rule provides that the base penalty for violations involving a monthly benefit period is multiplied by 4.34821 up to a maximum of the greater of $21,741 ($5000 x 4.34821) or twice the amount affected."

In §180.3(b) - page 2266, left column. The last sentence in subsection (b) should be shown as deleted text.

In §180.15(b)(2)(C) - page 2270, right column. The last sentence in this subparagraph should read as follows:

Mathematically, this formula reads (Base Penalty (PIE) ÷ AWW

In §180.15(b)(2)(D) - page 2270, right column. This subparagraph should read as follows:

"If the violation involves monthly rather than weekly benefit periods, the Base Penalty shall be multiplied by 4.34821 (which is the average number of weeks in a month) up to a maximum of the greater of $21,741.00 ($5000 (4.34821) or twice the amount affected."

TRD-200302035

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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