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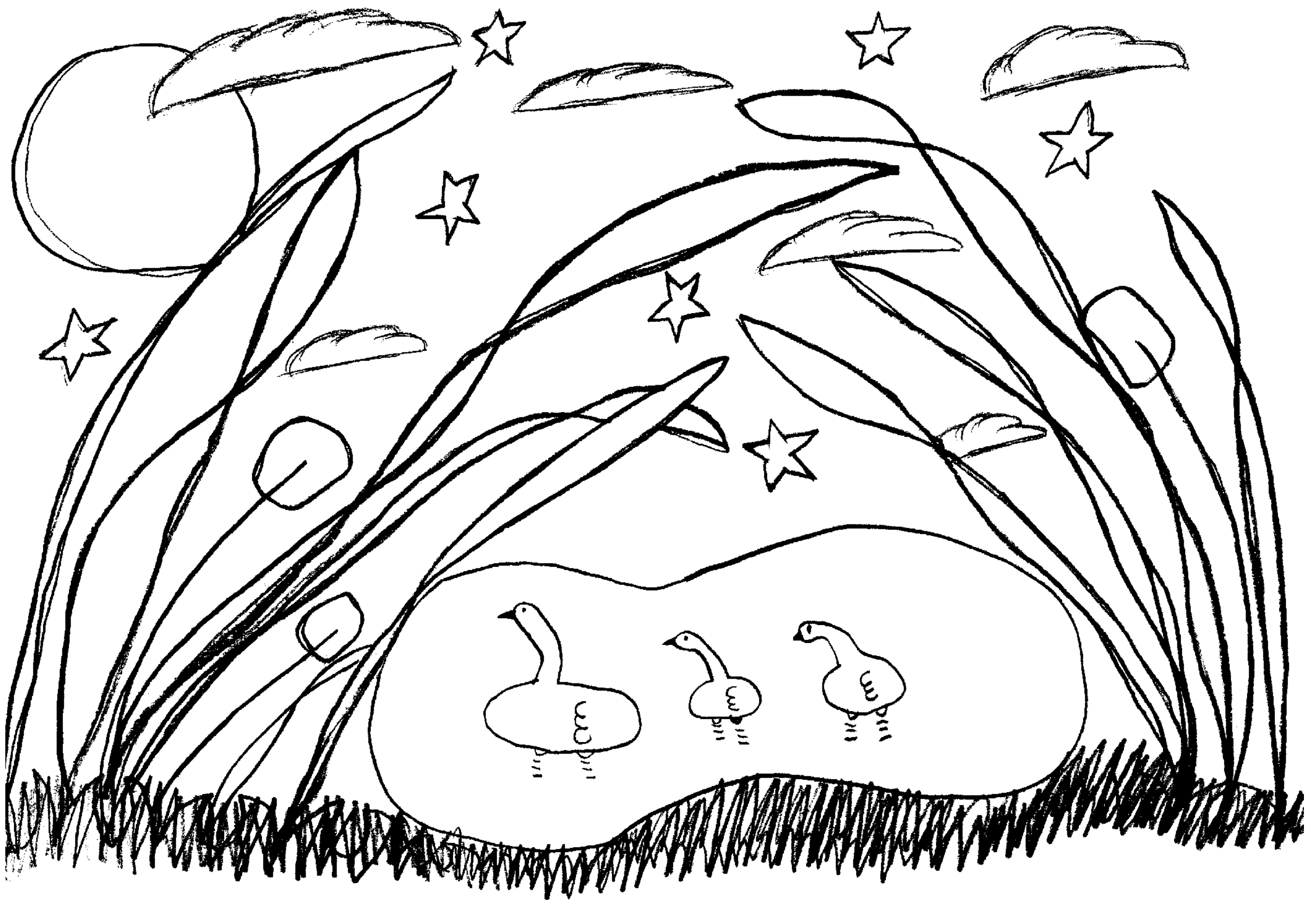

Ariel Piñon
4th Grade

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Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointment for April 30, 2003

Appointed to the Pilot Commission for the Sabine Bar, Pass and Tributaries for a term to expire August 22, 2003, George W. Brown, III of Beaumont. Mr. Brown is replacing Roy Steinhagen of Beaumont whose term expired.

Appointments for May 15, 2003

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2009, George Strunk, DDS of Longview (replacing Cornelius Henry of Tyler whose term expired).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2009, Charles Field Wetherbee of Jourdanton (replacing H. Grant Lappin of Houston whose term expired).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2009, Norman Lewis Mason of Austin (replacing Michael Plunk of Dallas whose term expired).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2009, Helen Hayes McKibben of Lubbock (replacing Gail Wilks of Longview whose term expired).

Rick Perry, Governor

TRD-200303072

Appointments

Appointments for May 14, 2003

Appointed to the Texas Racing Commission for a term to expire February 1, 2009, Jesse R. Adams of Helotes. Mr. Adams will replace Terri Lacy of Houston whose term expired.

Appointed to the Texas Board of Pardons and Paroles for a term to expire February 1, 2009, Stephen T. Rosales of Austin. Mr. Rosales is replacing Lynn Brown of Gatesville whose term expired.

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31,2005, Malcolm J. Deason of Lufkin (replacing Patrick Cordero of Midland whose term expired).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31,2005, William A. Faulk, Jr. of Brownsville (Mr. Faulk is being reappointed.).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2005, Larry D. Kokel of Walburg (replacing James Synatzske of Stephenville whose term expired).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2005, L. W. "Wayne" Mayo of Richardson (Mr. Mayo is being reappointed).

Appointed to the Texas Public Finance Authority Board of Directors for a term to expire February 1, 2007, Barry Thomas Smitherman of Houston. Mr. Smitherman is replacing John Kerr of San Antonio whose term expired.

Appointed to the Texas Commission for the Blind for a term to expire February 1, 2009, Robert Gene Griffith of Round Rock (replacing John Turner of Dallas whose term expired).

Appointed to the Texas Commission for the Blind for a term to expire February 1, 2009, Brenda Gail Saxon of Austin (replacing Don Oates of Nacogdoches whose term expired).

Appointed to the Texas Commission for the Blind for a term to expired February 1, 2009, Beverly A. Stiles of Rockport (Ms. Stiles is being reappointed).

Rick Perry, Governor

TRD-200303016

Proclamation 41-2914

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, a vacancy now exists in the Texas House of Representatives in the membership of District No. 43, which consists of Brooks, part of Cameron, Jim Hogg, Kenedy, Kleberg, and Willacy Counties; and

WHEREAS, the results of the special election have been officially declared; and

WHEREAS, no candidate in the special election received a majority of the votes cast, as required by Section 203.003 of the Texas Election Code; and

WHEREAS, Section 203.013(e) of the Texas Election Code requires a special runoff election to be held on a Tuesday or Saturday not earlier than the 12th or later than the 25th day after the date the election is ordered;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF TEXAS, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special runoff election to be held in District No. 43 on Tuesday, the 6th day of May, 2003, for the purpose of electing a State Representative for District No. 43 to serve the term of the Honorable Irma Rangel.

Early voting by personal appearance shall begin on Monday, April 28, 2003, in accordance with Tex. Elec. Code §85.001(b) or earlier if ordered by the County Clerk of each County, in accordance with Tex. Elec. Code §85.001(c).

A copy of this order will be mailed immediately to the County Judges of Brooks, Cameron, Jim Hogg, Kenedy, Kleberg, and Willacy Counties and all appropriate writs will be issued and all proper proceedings will be followed, to the end that said election may be held to fill the vacancy in District No. 43 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 22nd day of April, 2003.

Rick Perry, Governor

ATTESTED BY: Gwyn Shea, Secretary of State

TRD-200303129

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.

Open Records Decision

Open Records Decision No. 679(ORQ-63)(ID# 184480-03) May 16, 2003

Requestor: Gary L. Johnson, 209 West 14th Street, Austin, Texas 78701.

RE: Whether section 2(c) of article 4512g-1, Vernon's Annotated Revised Civil Statutes, requires the Dallas Police Department to release an offense report of an investigation of an incident of child abuse that is confidential under section 261.201(a)(2) of the Family Code to a community supervision and corrections department officer.

SUMMARY: Section 2(c) of article 4512g-1 of Vernon's Annotated Revised Civil Statutes does not permit the Department to release a record made confidential by section 261.201 of the Family Code to a community supervision and corrections department officer. Therefore, the Dallas Police Department must not release the record to a CSCD officer.

TRD-200303167
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 21, 2003

Opinions

Opinion No. GA-0068

The Honorable Harvey Hilderbran

Chair, Committee on State Cultural

and Recreational Resources

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Validity of ethics ordinance provisions proposed for adoption by the City of Seguin (RQ-0626-JC)

S U M M A R Y

Pursuant to Local Government Code section 171.009, a city council may transact business with a nonprofit corporation on which a local public official serves as an uncompensated director, and the director is not required to follow the recusal procedures in section 171.004. Local Government Code chapter 171, which pertains to conflicts of interest of local public officials, is cumulative of municipal charter provisions and municipal ordinances defining and prohibiting conflicts of interests. A home-rule city may adopt an ordinance regulating conflicts of interest of its officials that is not inconsistent with Local Government Code chapter 171.

A home-rule city ordinance that bars a city council member from taking part in the management, affairs, or political campaign of any municipal candidacy aside from his or her own candidacy limits a public officer's speech about the qualifications of candidates for public office and thus burdens core First Amendment rights. It is subject to strict scrutiny, and its constitutionality depends on whether it is narrowly tailored to serve a compelling state interest.

Opinion No. GA-0069

The Honorable Kent Grusendorf

Chair, Committee on Public Education

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether a municipality that has been granted a charter for an open-enrollment charter school may issue certificates of obligation to construct facilities for the school (RQ-0029-GA)

S U M M A R Y

Because section 12.101(a) of the Education Code does not authorize a municipality to operate an open-enrollment charter school in a municipal facility, a municipality is not authorized to issue certificates of obligation to finance such a facility's construction.

The Seventy-eighth Legislature is currently considering legislation that would permit an eligible entity to operate an open-enrollment charter school in its own facility and would expressly authorize a municipality that is granted a charter to borrow funds, issue obligations, and spend its funds to construct buildings for the charter school. *See* Tex. H.B. 1564, 78th Leg., R.S. (2003). This legislation would authorize a municipality to issue certificates of obligation to finance construction of a facility for its open-enrollment charter school. If municipalities are granted statutory authority to operate charter schools in municipal facilities and to construct facilities for their charter schools, using municipal funds to

construct such a facility would accomplish a legitimate public purpose of a municipality under article III, section 52 of the Texas Constitution.

Opinion No. GA-0070

The Honorable Michael J. Guarino

Criminal District Attorney

Galveston County

722 Moody, Suite 300

Galveston, Texas 77550

Re: Whether, under chapter 271 of the Texas Local Government Code, Galveston County may use design-build contracts and lease-purchase agreements to construct thermal energy plants for building complexes (RQ-0630-JC)

S U M M A R Y

A thermal energy plant built to facilitate a building complex is a 'facility' under subchapter H, chapter 271 of the Texas Local Government Code, so that it may be built using the design- build method of construction. Galveston County does not have implied authority to enter into a sale and leaseback or lease and leaseback of property to acquire a thermal energy plant in connection with a jail facility.

Opinion No. GA-0071

The Honorable Kenneth Armbrister

Chair, Senate Committee on Natural Resources

Texas State Senate

P.O. Box 12068

Austin, Texas 78711

Re: Whether article III, section 55 of the Texas Constitution prohibits the rebate of municipal sales taxes (RQ-0011-GA)

S U M M A R Y

If a business collects and remits municipal sales taxes as required by law, the city's rebate of those taxes to the business does not violate article III, section 55 of the Texas Constitution. *See* TEX. CONST. art. III, §55 (prohibiting the legislature and political subdivisions from "releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual" to the state or political subdivision).

Opinion No. GA-0072

The Honorable Frank Madla

Chair, Intergovernmental Relations Committee

Texas State Senate

P.O. Box 12068

Austin, Texas 78711

Re: Whether a well that was installed prior to September 1, 2002, but that was capped and will not be used to produce water until some indefinite time after that date, is a "public water supply well" exempt from regulation by the Trinity Glen Rose Groundwater Conservation District (RQ-0631-JC)

S U M M A R Y

A well that was installed prior to September 1, 2002, but that was capped and is not used to produce water for a public water system, is not a "public water supply well" exempt from regulation by the Trinity Glen Rose Groundwater Conservation District under section 16(a)(2) of House Bill 2005. *See* TEX. WATER CODE ANN. §36.001(18) (Vernon Supp. 2003). Once the well is uncapped and produces the majority of its water for use by a public water system, however, it will be exempt from regulation by operation of section 16(a)(2) if the Texas Commission on Environmental Quality approved plans for the installation of the well before September 1, 2001, and the installation of the well was completed in accordance with the approved plans and the Commission's technical requirements for use as a public-water-system groundwater well before September 1, 2002. *See* Act of May 27, 2001, 77th Leg., R.S., ch. 1312, §16(a)(2), 2001 Tex. Gen. Laws 3222, 3226. The fact that a well was capped and did not produce water for a public water system prior to September 1, 2002, would not disqualify the well for the exemption

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

TRD-200303168
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 21, 2003

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 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.1

The Commission on State Emergency Communications (CSEC) proposes an amendment to §251.1, concerning regional plans for 9-1-1 service to outline the procedures for implementing and managing a mobile Primary Safety Answering Point (PSAP) and to propose changes to existing sections as necessary.

The amendment provides a definition for a mobile PSAP and a section outlining the procedures for implementing and managing a mobile PSAP, including the submission of standard operating procedures.

Paul Mallett, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Mallett has determined that for each year of the first five years the section is to be in effect, the public benefit anticipated as a result of enforcing the section will be improved effectiveness and reliability of 9-1-1 call delivery systems in the state program regions throughout the state. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.057, and 771.075; and Title 1 Texas Administrative Code, Part 12, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to plan, develop, provide provisions for and enhance the effectiveness and efficiency of 9-1-1 service.

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

§251.1. Regional Strategic Plans for 9-1-1 Service.

(a) Purpose. The Commission on State Emergency Communications (Commission [~~CSEC~~]) herein establishes a framework for regional planning commissions (RPCs) to use in the development of regional strategic plans for provisioning 9-1-1 service. Regional strategic plans should include, but not be limited to, the elements and subsections of this rule. Other rules provide specific standards for performance of these requirements.

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

(1) 9-1-1 Call Taking Position--Equipment acquired with 9-1-1 funds to answer the delivery of an emergency 9-1-1 call. The position is defined as the equipment necessary to answer the call, not the associated personnel. A position consists of a device for answering the 9-1-1 calls, a device to display 9-1-1 call information, and the related telephone circuitry and computer and/or router equipment necessary to ensure reliable handling of the 9-1-1 call.

(2) 9-1-1 Database--An organized collection of information, which is typically stored in computer systems that are comprised of fields, records (data), and indexes. In 9-1-1, such databases include master street address guides (MSAG), telephone numbers, emergency service numbers (ESN), and telephone customer records. This information is used for the delivery of location information to a designated public safety answering point (PSAP). Use of the 9-1-1 database must be authorized by the Commission [~~CSEC~~] and RPC. The database is developed and maintained by the local government agency and/or the RPC as described within the regional strategic plan in accordance with Commission [~~CSEC~~] §251.9 of this title (relating to Guidelines for Database Maintenance Funds).

(3) 9-1-1 Equipment and Services--Equipment and services acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 wireline or wireless call to an appropriate PSAP.

(4) 9-1-1 Network--The dedicated network of equipment, circuits, and controls assembled to establish communication paths to deliver 9-1-1 emergency communications.

(5) 9-1-1 Funds--Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.

(6) Automatic Location Identification (ALI)--A system that enables the automatic display at the PSAP of the caller's telephone number, the address/location of the telephone, and supplementary emergency services information.

(7) Automatic Number Identification (ANI)--A system that enables the automatic display at the PSAP of the ten-digit number associated with the device from which a 9-1-1 call originates.

(8) Capital Equipment Asset--Items and components that comprise the technology used to deliver and answer 9-1-1 calls whose cost is over $5,000 and which have a useful life of at least one year.

(9) Contingency Routing Plan--Routing scheme to provide for the provision of uninterrupted 9-1-1 service in the event of an incident that requires the temporary rerouting of 9-1-1 calls due to man-made or natural disasters.

(10) Local Monitoring Plan--The RPC schedule for monitoring all interlocal contracts, 9-1-1 funded activities, equipment, PSAPs, and subcontractors.

(11) Public Safety Answering Point (PSAP)--A 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area, as further defined in applicable law Texas Health and Safety Code, Chapters 771 and 772.

(A) Primary PSAP (P-PSAP)--A facility equipped and staffed with the ability to extend, receive, answer, transfer or relay to the appropriate public safety response agencies 9-1-1 calls. The P-PSAP must be in service 24 hours per day, 7 days per week, 365 days per year and meet the criteria of subsection (f) of this section.

(B) Secondary PSAP (S-PSAP)--A PSAP to which 9-1-1 calls are transferred or relayed from a P-PSAP, which may operate less than 24 hours per day, but which has the ability to extend, receive, answer, transfer or relay 9-1-1 calls and which meets the criteria of subsection (f) of this section.

(C) Remote PSAP--Equipment located at an emergency service responder's facility that is capable of conveying call information via printer, fax, or telephone and used as a means of call delivery.

(D) Mobile PSAP--An answering location, usually temporary, for receiving 9-1-1 calls originating within a given service area which is capable of and intended to be easily moved or relocated.

(12) Redundant Equipment and Services--Duplication of components running in parallel to increase reliability.

(13) Regional Planning Commission (RPC)--A commission established under Local Government Code, Chapter 391, also referred to as a regional council of governments.

(14) Regional Strategic Plan--A plan developed by each RPC for the establishment and operation of 9-1-1 service throughout the region that the RPC serves. The service and contents must meet the standards established by the Commission [~~CSEC~~].

(15) Selective Router Tandem (SR)--A switching office placed in front of a set of PSAPs that allows the routing of 9-1-1 calls to the proper PSAP.

(16) TDD/TTY--A Telecommunication Device for the Deaf (TDD) or Teletypewriter (TTY) or Text Telephone (TT).

(17) Wireless Phase I E9-1-1 Service--The service by which the wireless service provider (WSP) delivers to the designated PSAP the wireless end user's call back number, cell site/sector information in accordance with Commission [~~CSEC~~] §251.10 of this title (relating to Guidelines for Implementing Wireless E9-1-1 Service).

(c) Regional Plan Submission. All regional strategic plans for 9-1-1 service, or amendments to those regional plans, must be submitted to the Commission [~~CSEC~~] by a RPC as specified by Health and Safety Code, Chapter 771, §771.056, Submission of Regional Plan to the Commission [~~CSEC~~], and §771.057, Amendment of Plan. The RPC shall comply with all applicable federal and state laws in carrying out its approved regional plan.

(d) Regional Plan Scope. All regional plans for 9-1-1 service submitted for approval must address the entire geographic area within the boundaries of a RPC. The regional plan must identify all participating public safety agencies. All counties with a population greater than 120,000, according to the latest federal census, must have 9-1-1 service by September 1, 1995. In counties with less than 120,000 in population, resolutions supporting the regional plan must be included for all participating cities and counties. Because the definition of Public Agency in Health and Safety Code, Chapter 771, §771.001(7) creates a possibility of overlapping jurisdictions, the city or county government of that area should submit the resolution to support the regional plan.

(e) Regional Plan Criteria. The regional plan must include a description of how the 9-1-1 service is to be administered, a description of how money is to be allocated within the region, projected financial operating information for the two state fiscal years following the submission of the regional plan, strategic planning information for the five state fiscal years following the submission of the regional plan, and a detailed description of the equipment, network, and database services as required by Health and Safety Code, Chapter 771, §771.055, Strategic Planning.

(f) All regional plans for 9-1-1 service must include the following equipment and service:

(1) Automatic Number Identification (ANI) level of service;

(2) Automatic Location Identification (ALI) level of service;

(3) Wireless Phase I E9-1-1 level of service;

(4) One P-PSAP per RPC. If there is more than one PSAP, the system may be arranged for two or more PSAPs to share the 24-hour duty requirement;

(5) TDD/TTY or TDD/TTY compatible equipment in compliance with the Americans with Disabilities Act (ADA) and in compliance with Commission [~~CSEC~~] §251.4 of this title (relating to Guidelines for the Provisioning of Accessibility Equipment);

(6) A standby power supply for the 9-1-1 equipment;

(7) Forced disconnect feature to allow the PSAP to clear incoming circuits when necessary;

(8) The following redundant crucial service items at each PSAP:

(A) Network connections between each telephone central office or mobile switch and the SR;

(B) Network connections from the SR to the PSAP;

(C) Network connections from the ALI database to the PSAP;

(D) Database routers;

(E) Telephone sets and/or integrated ANI and ALI display call taking positions;

(F) Stand-alone TDD units as applicable; and

(G) Any other equipment essential to the 9-1-1 call-taking function;.

(9) A published ten-digit emergency telephone number that can accept emergency calls;

(10) A positive response to each 9-1-1 call to include an audible ringing tone connecting to a PSAP where either the call is answered by personnel at the PSAP or a recorded announcement provides further information; and

(11) The following required elements to insure the reliability of the 9-1-1 equipment and service:

(A) Contingency routing plan [Routing Plan];

(B) Network testing plan [Testing Plan];

(C) Local monitoring plan [Monitoring Plan];

(D) Capital asset plan [Asset Plan];

(E) Network diagrams [Diagrams];

(F) Database maintenance plan [Maintenance Plan]; and

(G) Equipment maintenance plan [Maintenance Plan].

(g) Amendments to Regional Plan. A regional plan may be amended according to procedure established in accordance with Commission [CSEC] §251.6 of this title (relating to Guidelines for Strategic Plans, Amendments, and Revenue Allocation).

(h) Call Taking Positions. Requests for an increase in the number of positions within a PSAP should be submitted for approval in the regional strategic plan along with justification for the increase. If an increase in the number of positions is required after the regional plan has been approved and the addition of the position(s) will require no additional funding, the RPC shall follow the requirements for amendment in accordance with §251.6 of this title. If additional funding is required for the additional position(s), the request shall be submitted to the Commission [CSEC] for consideration and approval in accordance with §251.6 of this title. Each PSAP shall be equipped with adequate call taking positions to meet anticipated call volume. Factors that may be considered in determining the proper number of positions include:

(1) Historical 9-1-1 call volume and growth;

(2) Call duration information;

(3) Anticipated area population growth; and

(4) Peak 9-1-1 call volume patterns.

(i) Adding a PSAP. Should there be a need to add a new PSAP within the region, the RPC shall provide the Commission [CSEC] written justification supporting the request. Appropriate justification shall include statistical information such as call volume and growth rates, or jurisdictional changes within the region. All requests for a new PSAP must include specific costs for equipment and services, as well as a complete written description and schematic illustrating the relationship of the proposed PSAP to the balance of the region's network. If additional funding is required to facilitate the addition of a PSAP, the request must be accompanied by a plan amendment, which will require Commission approval. These requirements apply to the addition of a remote or mobile PSAP, as well as, Primary and Secondary PSAPs.

(j) Mobile PSAP Procedures. When a RPC is approved to add a mobile PSAP, they must submit a Standard Operating Procedure (SOP) for that PSAP that includes, at a minimum:

(1) Designation of responsible local agency;

(2) Proposed hours of operation;

(3) Primary location of operation;

(4) Procedure for notification of relocation of PSAP;

(5) Asset management plan or insurance coverage to safeguard the equipment;

(6) Security plan for control of the equipment and data;

(7) Revised Interlocal Agreement to include the mobile PSAP; and

(8) Plan for equipment disposal upon termination of the use of the mobile PSAP.

(k) [(j)] Contracts. The RPC shall execute interlocal agreements between itself and its local governments responsible for PSAPs relating to the planning, development, operation and provision of 9-1-1 service, the use of 9-1-1 funds and adherence to applicable law in accordance with Commission [CSEC] §251.12 of this title (relating to Contracts for 9-1-1 Services).

(l) [(k)] Procurement. The RPC shall use competitive procurement practices and procedures similar to those required by state law for cities or counties, as well as any additional Commission [CSEC] policies, in conjunction with the procurement of 9-1-1 Customer Premises Equipment, 9-1-1 Network, and 9-1-1 Database Services, and any other items to be obtained with 9-1-1 funds in accordance with Commission [CSEC] §251.8 of this title (relating to Guidelines for the Procurement of Equipment and Services with 9-1-1 funds).

(m) [(l)] Equipment Management. The RPC is responsible for the 9-1-1 equipment in accordance with Commission [CSEC] §251.5 of this title (relating to Guidelines for 9-1-1 Equipment Management and Disposition). Any integration of expanded third-party applications onto a call taking position must be in accordance with Commission [CSEC] §251.7 of this title (relating to Guidelines for Implementing Integrated Services). If changes or extensions of 9-1-1 service occur, the RPC is to administer and report them in accordance with Commission [CSEC] §251.2 of this title (relating to Guidelines for Changing or Extending 9-1-1 Service Arrangements).

(n) [(m)] Testing. The RPC shall test all 9-1-1 Customer Premises Equipment (including TDD/TTY), 9-1-1 Network, and 9-1-1 Database services. Testing shall occur when new service or equipment is installed, service or equipment is modified, and on a regular basis to ensure system reliability and compliance with ADA. A schedule for ongoing testing shall be developed by the RPC and shall be available to the Commission [CSEC] for monitoring.

(o) [(n)] Monitoring. The Commission [CSEC] reserves the right to perform on-site monitoring of the RPC and/or its performing local governments or PSAPs, including mobile PSAPs, for compliance with applicable law in accordance with Commission [CSEC] §251.11 of this title (relating to Monitoring Policies and Procedures).

(p) [(o)] Performance Reporting. A RPC shall submit financial and performance reports to the Commission [CSEC] at least quarterly on a schedule to be established by the Commission [CSEC]. The financial report shall identify actual implementation costs by county, strategic plan priority level, and component. The performance report shall reflect the progress of implementing the region's strategic plan including, but not limited to, the status of equipment, services, and program deliverables in a format to be determined by the Commission [CSEC].

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

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

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Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: June 29, 2003
For further information, please call: (512) 305-6933

1 TAC §251.6

The Commission on State Emergency Communications (CSEC) proposes an amendment to §251.6, concerning guidelines for submission requests from councils of governments on strategic plans, amendments and allocation of equalization surcharge funds.

Current §251.6 provides a description of the formats and processes for regional strategic planning, plan amendments, and funding of plans. Modifications are necessary for the preparation of the regional strategic plans for fiscal years 2004-2005. The proposed changes only impact the sections that define the line-item components of the financial budgeting portion of the plans.

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

Mr. Mallett also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be improved system for funds allocation and implementation levels for the 9-1-1 program statewide. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the amendment may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed pursuant to the Texas Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.057, 771.071, 771.0711, 771.072, and 771.075, which authorize the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

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

§251.6. Guidelines for Strategic Plans, Amendments, and Revenue Allocation.

(a) (No change.)

(b) Strategic Plan Levels. Regional strategic plans developed in accordance with Chapter 771, along with the commensurate allocation of the above described funds, shall reflect implementation consistent with the following three major strategic plan levels (in order of priority) through state fiscal year 2003 [2001].

(1) Level I: The equipment, network and database equipment and/or services that provide the essential elements of 9-1-1 service, including the maintenance and replacement of equipment.

(A) Network;

(B) Wireless Phase I;

(C) Database;

(D) Equipment;

(E) Language Line;

(F) Equipment maintenance.

(2) Level II: The activities, equipment, and/or services that directly support and enhance 9-1-1 call delivery and data maintenance for the level of service provided to the region.

(A) Addressing Maintenance;

(B) Graphic MSAG;

(C) MIS;

(D) Mapped ALI;

(E) PSAP Room Prep;

(F) PSAP Training/Public Education; and

(G) Wireless Phase II.

(3) Level III: The activities, equipment, and/or services that provide auxiliary enhancements to the delivery of 9-1-1 calls and the level of service provided to the region.

(A) Network Diversity;

(B) Training Positions;

(C) Emergency Power;

(D) Recorders;

(E) Pagers;

(F) Ancillary Maintenance & Repair; and

(G) Other.

[(1) Level I: 9-1-1 service generally associated with Automatic Number Identification (ANI), to include the following components and associated costs:]

[(A) ANI (equipment and network);]

[(B) Public Safety Answering Point (PSAP) Room Preparation;]

[(C) Language Line;]

[(D) PSAP Supplies;]

[(E) Telecommunications Device for the Deaf (TDD);]

[(F) Maintenance/Repair (ANI/TDD); and]

[(G) Capital Recovery (ANI/TDD).]

[(2) Level II: 9-1-1 service generally associated with ANI, Selective Routing (SR), Automatic Location Identification (ALI) and any other network and/or database system enhancement, to include the following components and associated costs:]

[(A) ANI/ALI/SR (equipment and network);]

[(B) PSAP Room Preparation;]

[(C) Addressing;]

[(D) Addressing Maintenance;]

[(E) PSAP Training;]

[(F) Maintenance/Repair (CPE);]

[(G) Capital Recovery (telephone equipment); and]

[(H) Capital Recovery (addressing).]

[(3) Level III: Other 9-1-1 equipment, services and enhancements to same, to include, but not limited to the following components and associated costs:]

[(A) Additional Trunk Diversity;]

[(B) Other Redundancy;]

[(C) Wireless Access;]

[(D) Training Positions;]

[(E) Emergency Power;]

[(F) Recorders;]

[(G) Pagers;]

[(H) Detectors/Diverters;]

[(I) External Ringers;]

[(J) Mapped ALI;]

[(K) Maintenance/Repair (ancillary equipment);]

[(L) Capital Recovery (ancillary equipment); and]

[(M) Other.]

(c) New Strategic Plan Levels. Regional strategic plans developed in accordance with Chapter 771, along with the commensurate allocation of the above described funds, shall reflect implementation consistent with the following three major strategic plan levels (in order of priority) beginning state fiscal year 2004 [2002].

(1) Level I: The equipment, network and database equipment and/or services that provide the essential elements of 9-1-1 service, including the maintenance and replacement of equipment.

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

(D) Equipment Lease;

(E) Equipment Purchase [Language Line];

(F) Language Line; [Equipment maintenance.]

(G) Equipment Maintenance.

(2) Level II: The activities, equipment, and/or services that directly support and enhance 9-1-1 call delivery and data maintenance for the level of service provided to the region.

(A) (No change.)

(B) MIS [Graphic MSAG];

(C) Mapped ALI [MIS];

(D) PSAP Room Prep [Mapped ALI];

(E) PSAP Training [PSAP Room Prep];

(F) [PSAP Training/]Public Education; and

(G) (No change.)

(3) (No change.)

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

(f) Allocation of Revenue.

(1) (No change.)

(2) Equalization Surcharge Funds--

(A) Within the context of §771.056(d) [Section 771.056(d)], the Commission shall consider any revenue insufficiencies to represent need for equalization surcharge funding support.

(B) - (F) (No change.)

(g) - (i) (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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Paul Mallett
Executive Director
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For further information, please call: (512) 305-6933

1 TAC §251.12

The Commission on State Emergency Communications (CSEC) proposes an amendment a to §251.12, concerning contracts for 9-1-1 services. Such changes reflect the balance of recommendations made by the Management Advisory Services (MAS) of the State Auditor's Office and anticipated legislative requirements. The changes are being made only to the contract listed in Figure: 1 TAC §251.12(d), not to the text of §251.12.

Proposed revisions to the contract will clarify requirements and make the contract more reflective of current and pending legislation specific to monitoring compliance; standard interlocal agreement with local governments; service fee funding; surcharge allocation; strategic planning to include historically underutilized business plan with strategic plan; reporting requirements; and State Auditor's Office on-site monitoring and audits of Regional Planning Commissions.

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

Mr. Mallett also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better accountability of funds and program reporting requirements. No historical data is available, however, there is no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed pursuant to the Health and Safety Code, Chapter 771, §§771.071, 771.0711, 771.072, 771.073, 771.075, 771.078, 771.055, 771.056, and Title 1 Texas Administrative Code, Part 12, which authorizes the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

No other statute, article or code is affected by the proposed amendment.

§251.12. Contracts for 9-1-1 Services.

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

(d) The contract described in subsection (b) of this section shall substantially conform to the following standard contract form:
Figure: 1 TAC §251.12(d)

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

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Paul Mallett
Executive Director
Commission on State Emergency Communications
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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.501, concerning reimbursement methodology for Program for All-Inclusive Care for the Elderly (PACE); and proposes new §355.501, concerning reimbursement methodology for Programs of All-Inclusive Care for the Elderly (PACE), in its Medicaid Reimbursement Rates chapter. The purpose of the repeal and new section is to comply with new payment rate determination guidelines instituted by the Centers for Medicare and Medicaid (CMS) for PACE sites. CMS recently converted PACE from a Medicaid research and demonstration project to a Medicaid State Plan program. As a result of this change, CMS instituted new payment rate guidelines. The major change instituted by CMS is that upper payment limits per member month must be calculated for each PACE geographic site based on the historical claims of the geographic site. CMS also requires that historical claims for both nursing facility and Community Based Alternatives recipients be based on the population served by the Texas Department of Human Services that meets nursing facility eligibility. Historical claims include all costs to the Medicaid program needed to serve these recipients, including acute care services, long-term care services, medical transportation, prescriptions, and other services. CMS also requires that the payment rates be lower than the calculated upper payment limit. This is achieved by determining the payment rate at 95% of the upper payment limit. The upper payment limits and reimbursement rates are determined coincident with the state's biennium. The proposal also includes two reimbursement rates calculated for each PACE contract: one for clients eligible only for Medicaid services and one for clients eligible for both Medicare and Medicaid services. The proposal ensures that HHSC is in compliance with these requirements.

Tom Suehs, Deputy Commissioner for Financial Services, has determined that, for the first five-year period the proposed section is in effect, there are fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local government as a result of enforcing or administering the section.

The effect on state government for the first five-year period the section is in effect is an estimated additional cost of $1,256 in fiscal year (FY) 2003; $67,818 in FY 2004; $124,463 in FY 2005; $129,917 in FY 2006; and $130,002 in FY 2007.

Steve Lorenzen, Director, Rate Analysis, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is that by complying with new CMS payment rate guidelines, the PACE program will continue to operate. This will allow the PACE program to continue to serve recipients through a comprehensive service model that provides health-related services to elderly clients in their own communities as an alternative to nursing facility care. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the proposal ensures that the PACE program will continue to operate with similar reimbursement rates for the majority of clients eligible for Medicare and Medicaid. Providers will receive greater reimbursement for the few Medicaid-only clients they serve. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Nancy Kimble at (512) 338- 6496 in HHSC Rate Analysis. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-166, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.501

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

The repeal affects the Government Code, §§531.033 and 531.021(b).

§355.501. Reimbursement Methodology for Program for All-Inclusive Care for the Elderly (PACE).
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 14, 2003.

TRD-200303002
Steve Aragon
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 438-3734

1 TAC §355.501

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

The new section affects the Government Code, §§531.033 and 531.021(b).

§355.501. Reimbursement Methodology for Programs of All-Inclusive Care for the Elderly (PACE).

(a) General specifications. The Texas Health and Human Services Commission (HHSC) determines the upper payment limits and reimbursement rates for each PACE contractor. HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) Frequency of reimbursement determination. The upper payment limits and reimbursement rates are determined coincident with the state's biennium.

(c) Upper payment limit determination. There are two upper payment limits calculated for each PACE contract: one for clients eligible only for Medicaid services and one for clients eligible for both Medicare and Medicaid services. An average monthly historical cost per client receiving nursing facility and Community Based Alternatives (CBA) services under the fee-for-service payment system is calculated for the counties served by each PACE contract for each type of upper payment limit.

(1) The upper payment limits for the biennium are calculated for the base period using historical fee-for-service claims data and member-month data from the most recent state fiscal year of complete claims available prior to the state's biennium.

(2) The historical costs are derived from fee-for-service claims data for clients receiving nursing facility services or CBA services in the counties served by each PACE contract. This applies to clients who:

(A) are age 55 and older;

(B) have Medicare coverage and who do not have Medicare coverage; and

(C) are not receiving services under the STAR+PLUS managed care program.

(3) The historical costs include:

(A) acute care services, including inpatient, outpatient, professional, and other acute care services;

(B) prescriptions;

(C) medical transportation;

(D) nursing facility services;

(E) hospice services;

(F) long-term care specialized services, including physical therapy, occupational therapy, and speech therapy;

(G) CBA services;

(H) Primary Home Care (including Family Care) services; and

(I) Day Activity and Health Services.

(4) To determine an average monthly historical cost for the counties served by each PACE contract, the total historical fee-for-service claims data for the counties served by each PACE contract are divided by the number of member months for the counties served by each PACE contract.

(5) A per member month amount is added to the average monthly historical cost per client. The per member month amount is added for:

(A) processing claims, based on the state's cost to process claims under the fee-for-service payment system; and

(B) case management, based on the state's cost to provide case management under the fee- for service payment system for CBA clients.

(6) The sum of the average monthly historical cost per client for each PACE contract and the amounts from paragraph (5) of this subsection are projected from the claims data base period identified in paragraph (1) of this subsection to the rate period to account for anticipated changes in costs for each PACE contract.

(d) Payment rate determination. There are two reimbursement rates calculated for each PACE contract: one for clients eligible only for Medicaid services and one for clients eligible for both Medicare and Medicaid services. The payment rates for each PACE contract are determined by multiplying the upper payment limits calculated for each PACE contract by 0.95.

(e) Reporting of cost. HHSC may require the PACE contractor to submit financial and statistical information on a cost report or in a survey format designated by HHSC. Cost report completion is governed by the requirements specified in Subchapter A of this chapter (relating to Cost Determination Process). HHSC may also require the PACE contractor to submit audited financial statements.

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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Steve Aragon
General Counsel
Texas Health and Human Services Commission
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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION DIVISION
SUBCHAPTER C. TAP, TASTE OF TEXAS, VINTAGE TEXAS, TEXAS GROWN, NATURALLY TEXAS AND GO TEXAN AND DESIGN MARKS

The Texas Department of Agriculture (the department) proposes the repeal of §17.58, and new §17.58, concerning the GO TEXAN Beef Program rules. The repeal and new section are proposed to allow the department to revise the section throughout to clarify requirements of the program, amend the definitions and change some requirements of the membership categories including an elimination of the requirement that cattle be grain fed, and to add a new membership category. The proposed repeal eliminates existing §17.58. Proposed new §17.58 provides a statement of purpose, product requirements, membership categories and requirements, an application process, fees for application, and provides for scientific review panels to assist the department in the application review process for the GO TEXAN Beef Program.

Terri Barber, Director for Livestock Marketing, has determined that for the first five-year period the proposed repeal and new section are in effect there will be no fiscal implications for state or local government as a result of administering or enforcing the proposed repeal and new section.

Ms. Barber has also determined that for each year of the first five years the proposed repeal and new section are in effect, the public benefit anticipated as a result of administering and enforcing the repeal and new section is clearer eligibility requirement for implementation of the program and the ability for broader participation in the program. There no additional costs anticipated to microbusinesses, small businesses or individuals wishing to join the program. Costs for those applicants wishing to join the program will remain the same as under the existing rule. The GO TEXAN program registration fee remains the same as under the existing rule.

Comments may be submitted to Terri Barber, Director for Livestock Marketing, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

4 TAC §17.58

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

The repeal of §17.58 is proposed under the Texas Agriculture Code (the Code), §12.0175, which authorizes the department to adopt rules to administer a program to promote and market agricultural products grown or processed in Texas.

The code that will be affected by this proposal is the Texas Agriculture Code, Chapter 12.

§17.58. GO TEXAN Beef Program.

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

Filed with the Office of the Secretary of State on May 14, 2003.

TRD-200303011
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 29, 2003
For further information, please call: (512) 463-4075

4 TAC §17.58

New §17.58 is proposed under the Texas Agriculture Code (the Code), §12.0175, which authorizes the department to adopt rules to administer a program to promote and market agricultural products grown or processed in Texas and to charge a membership fee, as provided by department rule, for each participant in the program.

The code that will be affected by this proposal is the Texas Agriculture Code, Chapter 12.

§17.58. GO TEXAN Beef Program.

(a) Statement of Purpose; Applicability. The GO TEXAN Beef Program is established to provide a marketing program that adds value to raw Texas beef by allowing use of the Texas Department of Agriculture's GO TEXAN and Design mark only on raw beef products that meet important quality and palatability characteristics. This section provides that feedlot operators, slaughter facilities, fabricators and private label marketers may be certified as GO TEXAN Beef Program members if they meet the requirements of this section. This section shall apply only to 100% raw beef products, as defined in this section. Though processed beef products (products that have been altered from a raw state by the addition of seasonings or marinades or by being cooked using techniques indigenous to Texas' cooking cultures such as by BBQ, Tex-Mex, Southwestern cuisine, etc.) are not eligible for membership in the GO TEXAN Beef Program, they are eligible for membership in the general "GO TEXAN" Program, as set forth in this subchapter. Beef cattle producers may also qualify for membership in the general "GO TEXAN" Program as livestock producers.

(b) Product Requirements. Raw and non-processed beef products meeting the requirements outlined in this section will be eligible for certification as "GO TEXAN" 100% beef products as part of the GO TEXAN Beef Program. For purposes of this section, the word "non-processed" means a 100% beef product that has not been altered from its raw state by the addition of seasonings or marinades or by being cooked.

(c) Membership Categories, to include Feedlot Operators, Harvest Operations, Fabricators and Private Label Marketers.

(1) Feedlot operations. In order to be certified as a "GO TEXAN" feedlot, a feedlot must meet the following requirements:

(A) The feedlot must be located in Texas.

(B) The feedlot must participate in a beef safety and quality assurance program and may feed Vitamin E to the cattle certified for slaughter as a "GO TEXAN" 100% beef product.

(C) The feedlot must submit a GO TEXAN Beef Program application to the department in accordance with this section.

(2) Harvest operations. In order to be certified as a "GO TEXAN" harvest operation, a facility including a beef packer or boxed beef supplier, must meet the following requirements:

(A) The facility must be located in Texas and must be inspected by the Texas Department of Health (TDH) or the United States Department of Agriculture (USDA).

(B) All cattle harvested by the facility for certification as a "GO TEXAN" 100% beef product must have resided in Texas a minimum of 100 days immediately prior to harvesting.

(C) The facility must employ practices to optimize palatability of beef cuts. All operations shall utilize the following practices:

(i) High voltage electrical stimulation of 300 volts or more along with a postmortem aging plan of 14 days or more, as approved by the commissioner and the scientific panel appointed by the commissioner; or

(ii) Another palatability-enhancing program that is validated with scientific data through the Option 2 Sampling Plan approved by the commissioner and the scientific panel appointed by the commissioner. Copies of the plan are available through the Texas Department of Agriculture.

(D) Raw beef eligible for certification as a "GO TEXAN" 100% beef product must be of the following quality:

(i) Products of Prime, Choice or Select quality as defined by the USDA;

(ii) Products of Yield Grades 1, 2 or 3, as defined by the USDA;

(iii) Products coming from carcasses with a maturity score in the "A" maturity range, as defined by USDA;

(iv) Products coming from carcasses weighing less than 899 pounds; and

(v) Products not coming from carcasses with dark-cutting characteristics.

(E) The harvest facility must submit a GO TEXAN Beef Program application to the department in accordance with this section.

(3) Fabricators. For the purposes of this section, a fabricator is defined as a meat processing establishment that purchases wholesale cuts of meat and converts them into ready-to-cook cuts for the retail or foodservice market by such steps as portioning, grinding, cubing and other such practices. In order to be certified as a "GO TEXAN" fabricator, a fabricator must meet the following requirements:

(A) The fabrication facility must be located in Texas.

(B) The owner or operator must confirm that raw materials used will be 100% raw beef sourced back to a TDH or USDA inspected harvest facility, and that such raw materials will meet the requirements of paragraph (2)(A) - (E) of this subsection.

(C) The fabricator must submit a GO TEXAN Beef Program application to the department, including the name of the proposed beef products.

(4) Private label marketers. In order to be certified as a "GO TEXAN" private label marketer of 100% beef products, private label marketers must meet the following requirements:

(A) Marketers who have a raw beef product boxed for their own label by another harvest facility or fabricator must confirm that the raw materials used will be 100% raw beef sourced back to a harvest facility or fabricator located in Texas, and that such raw materials will meet the requirements of paragraph (2)(A) - (E) or paragraph (3)(A) - (C) of this subsection.

(B) The private label marketer must submit a GO TEXAN Beef Program application to the department, including the name of the proposed beef products.

(d) Application Process.

(1) Application to use the GO TEXAN and Design mark in accordance with this section, shall be made in the same manner as provided in §17.52 of this title (relating to Application to Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design Mark).

(2) Applicants must certify on the application that all applicable GO TEXAN Beef Program requirements are met.

(3) The department may contact applicants to verify that all GO TEXAN Beef Program requirements are met.

(4) Except as otherwise provided in this section, all requirements for membership in the general "GO TEXAN" program shall apply to entities certified under this section.

(e) Fees. Applicants shall submit an annual fee in the amount of $25 at the time of application to enroll in the GO TEXAN Beef Program. The annual fee is prorated monthly for membership of less than one year. Companies will be billed the annual registration fee of $25 each membership year thereafter.

(f) Review Panels. Review panels provided for as part of the application review process under this section shall be appointed by the commissioner and shall be composed of three meat scientists with doctorate degrees in meat science and a background in research.

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

Filed with the Office of the Secretary of State on May 14, 2003.

TRD-200303012
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 29, 2003
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 1. UNBUNDLING

16 TAC §§25.341 - 25.343, 25.346

The Public Utility Commission of Texas (commission) proposes amendments to §25.341, relating to Definitions; §25.342, relating to Electric Business Separation; §25.343, relating to Competitive Energy Services; and §25.346, relating to Separation of Electric Utility Metering and Billing Service Costs and Activities.

The proposed amendments address issues that have arisen in the area of competitive energy services since the initial adoption of these rules in 2000, and allow for a fairer treatment of all parties concerned with competitive energy services. Project Number 26418 is assigned to this proceeding.

The Public Utility Regulatory Act, Texas Utilities Code Annotated §39.051(a) (Vernon 1998, Supplement 2003) (PURA) requires that on or before September 1, 2000, each electric utility shall separate from its regulated utility activities any customer energy services business activities that are already widely available in the competitive market. To implement PURA §39.051(a), the commission adopted §25.343, which prescribes the manner in which an electric utility must separate its competitive energy services and prohibits the regulated utility from providing competitive energy services, as defined in §25.341, after September 1, 2000. The proposed amendments clarify certain definitions of competitive energy services in §25.341, modify the petition process under §25.343 for an electric utility to change the designation of competitive energy services it is authorized to provide, and allow a utility to provide certain competitive energy services in an emergency situation.

In particular, proposed §25.341 clarifies the parameters of what is a competitive energy service that an electric utility cannot provide with regard to non-roadway, outdoor security lighting, transformation and protection equipment, and power quality diagnostic services. In addition, the proposed amendments delete certain definitions in §25.341 that are duplicative of those contained in §25.5, relating to Definitions. The proposed amendments to §25.342 and §25.346 make non-substantive changes to correct cross-references, modify the timelines for business-separation filings by utilities for which customer choice has been delayed, and make several changes related to metering services in areas without competitive metering. The proposed amendments to §25.343 modify the petition process and extend the period that a utility may provide a petitioned service from two years to three years. In addition, proposed §25.343 adds a new subsection (f) regarding the provision of transformation and protection equipment and transmission and substation repair services by a utility in an emergency situation.

Sally Talberg, Chief Policy Analyst, Policy Development 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 amended sections.

Ms. Talberg has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved regulatory oversight of electric utilities, enhanced competition in the provision of energy-related services, and greater certainty for customers in the provision of services for which there is no competition. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Talberg has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act, Texas Government Code §2001.022.

If requested pursuant to the Administrative Procedure Act §2001.029, the commission staff will conduct a public hearing on this rulemaking on Tuesday, July 8, 2003 at 10:00 a.m. at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed amendments (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 31 days after publication. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. When commenting on specific subsections of the proposed rules, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples that are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts. All comments should refer to Project Number 26418.

In addition to comments on the proposed amendments, the commission seeks comments on the following three questions:

1. Should an electric utility that is located in an area where customer choice has been delayed by the commission pursuant to PURA §39.103 be exempt from the commission's competitive energy services rules until customer choice begins in the utility's service area? When responding to this question, parties should explain the legal and policy reasons that support their position, as well as the market conditions for competitive energy services in the particular areas.

2. Should the commission provide a "grandfather" exception to proposed §25.341(4)(F) to allow an electric utility to own, operate, or maintain transformation equipment on the customer's side of the delivery point that was installed prior to September 1, 2000 and is still owned by the utility?

a) Should this exception extend to situations in which a retail customer has entered into a contract with a utility to purchase such equipment, but has not yet completed the purchase? If so, what options should be available to such a retail customer on a going-forward basis (e.g., purchase existing facilities, continue renting facilities, or terminate the rental agreement)?

b) On what basis should such an exception be granted? When responding to this question, please provide detailed information on the availability of competitive energy services providers for this type of service in the relevant areas.

3. Proposed §25.343(d)(1) allows an electric utility that files a petition to provide a competitive energy service that is not widely available in an area to file jointly with an affected person or with commission staff. Should commission staff, end-use customers, or other affected persons be able to petition, independently from the utility, for the commission to allow a utility to provide a competitive energy service that the utility is otherwise prohibited from providing? If so, should the petition process, including the notice requirements, burden of proof, and standard of review, be modified in any manner? Would the utility have to agree to provide

the petitioned service if the petitioner demonstrated that the service was not widely available in an area?

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.002(a), 14.001, 14.002, 38.022, 39.001, and 39.051 (Vernon 1998, Supplement 2003) (PURA). Section 11.002(a) requires establishment of a comprehensive and adequate regulatory system by the commission to ensure just and reasonable rates, operations, and services. Section 14.001 grants the commission the general power to regulate and supervise the business of each utility within its jurisdiction. Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 39.001 states the legislative policy and purpose for a competitive electric power industry. Section 39.051 requires that on or before September 1, 2000, each electric utility shall separate from its regulated utility activities any customer energy services business activities that are already widely available in the competitive market.

Cross Reference to Statutes: Public Utility Regulatory Act §§11.002(a), 14.001, 14.002, 38.022, 39.001, and 39.051.

§25.341. Definitions.

The following words and terms, when used in Division 1 [~~I~~] of this subchapter (relating to Unbundling and Market Power), shall have the following meanings, unless the context clearly indicates otherwise:

[~~(1) Above market purchased power costs--Wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.~~]

[~~(2) Affected utilities--A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with the Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:~~]

[~~(A) a municipal corporation;~~]

[~~(B) a qualifying facility;~~]

[~~(C) a power generation company;~~]

[~~(D) an exempt wholesale generator;~~]

[~~(E) a power marketer;~~]

[~~(F) a corporation described by the Public Utility Regulatory Act (PURA) §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;~~]

[~~(G) an electric cooperative;~~]

[~~(H) a retail electric provider;~~]

[~~(I) this state or an agency of this state; or~~]

[~~(J) a person not otherwise an electric utility who:~~]

[~~*(i)* furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;~~]

[~~*(ii)* owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or~~]

[~~*(iii)* owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.~~]

(1) [~~(3)~~] Advanced metering--Includes any metering equipment or services that are not transmission and distribution utility metering system services as defined in this section.

(2) [~~(4)~~] Additional retail billing services--Retail billing services necessary for the provision of services as prescribed under Public Utility Regulatory Act (PURA) [~~PURA~~] §39.107(e) but not included in the definition of transmission and distribution utility billing system services under this section.

[~~(5) Competition transition charge (CTC)--Any non-bypassable charge that recovers the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of PURA, Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263. Competition transition charges also include the transition charges established pursuant to PURA §39.302(7) unless the context indicates otherwise.~~]

(3) [~~(6)~~] Competitive energy services--Customer energy services business activities that [~~which~~] are capable of being provided on a competitive basis in the retail market. Examples of competitive energy services include, but are not limited to the marketing, sale, design, construction, installation, or retrofit, financing, operation and maintenance, warranty and repair of, or consulting with respect to:

(A) energy-consuming, customer-premises [~~customer-premise~~] equipment;

(B) the provision of energy efficiency services, the [~~and~~] control of dispatchable load management services, and other load-management services;

(C) the provision of technical assistance relating to any customer-premises process or device that consumes electricity, including energy audits;

(D) customer or facility specific energy efficiency, energy conservation, power quality, and reliability equipment and related diagnostic services provided, however, that this does not include reasonable diagnostic actions by an electric utility when responding to service complaints;

(i) reasonable diagnostic actions include actions necessary to determine if a power quality problem resides with the customer's equipment or with the utility's equipment and to notify the customer that the problem has been attributed to either the utility or the customer;

(ii) reasonable diagnostic actions do not include recommendations or actions to correct problems related to equipment on the customer's side of the delivery point that is owned by the customer or by a third-party entity that is not an electric utility;

(E) the provision of anything of value other than tariffed services to trade groups, builders, developers, financial institutions, architects and engineers, landlords, and other persons involved in making decisions relating to investments in energy-consuming equipment or buildings on behalf of the ultimate retail electricity customer;

(F) [~~customer-premises~~] transformation equipment, power-generation equipment, protection equipment, or other electric apparatus and infrastructure on the customer's side of the delivery point that is owned by the customer or by a third-party entity that is not an electric utility [~~and related services~~];

(i) This includes services related to such equipment, except in an emergency situation as set forth in §25.343 of this title (relating to Competitive Energy Services);

(ii) An electric utility is not permitted to own such equipment on the customer's side of the delivery point, except as otherwise provided in this subchapter;

(G) the provision of information relating to customer usage other than as required for the rendering of a monthly electric bill, including electrical pulse service, provided however that the provision of access to pulses from a meter used to measure electric service for billing in accordance with §25.129 of this title (relating to Pulse Metering), shall not be considered a competitive energy service;

(H) communications services related to any energy service not essential for the retail sale of electricity;

(I) home and property security services;

(J) non-roadway, outdoor security lighting; however, an electric utility may, pursuant to an approved fully unbundled, embedded-cost tariff, continue to provide such service, including, but not limited to, new or replacement lamps, for lighting facilities installed prior to September 1, 2000 and for lighting facilities installed as a petitioned service by the utility as of October 1, 2003[~~, except for the provision of service until January 1, 2002 to customers that were receiving such service on September 1, 2000~~];

(K) building or facility design and related engineering services, including building shell construction, renovation or improvement, or analysis and design of energy-related industrial processes;

(L) hedging and risk management services;

(M) propane and other energy-based services;

(N) retail marketing, selling, demonstration, and merchant activities;

(O) facilities operations and management;

(P) controls and other premises energy management systems, environmental control systems, and related services;

(Q) customer-premises [~~premise~~] energy or fuel storage facilities;

(R) performance contracting (commercial, institutional, and industrial);

(S) indoor air quality products (including, but not limited to air filtration, electronic and electrostatic filters, and humidifiers);

(T) duct sealing and duct cleaning;

(U) air balancing;

(V) customer-premise metering equipment and related services other than as required for the measurement of electric energy necessary for the rendering of a monthly electric bill or to comply with the rules and procedures of an independent organization; and

(W) other activities authorized [~~identified~~] by the commission by rule or order.

(4) [~~(7)~~] Discretionary service--Service that is related to, but not essential to, the transmission and distribution of electricity from the point of interconnection of a generation source or third-party electric grid facilities, to the point of interconnection with a retail customer or other third-party [~~third party~~] facilities.

(5) [~~(8)~~] Distribution--For purposes of §25.344(g)(2)(C) of this title (relating to Cost Separation Proceedings), distribution relates to system and discretionary services associated with facilities below 60 kilovolts necessary to transform and move electricity from the point of interconnection of a generation source or third-party [~~third party~~] electric grid facilities, to the point of interconnection with a retail customer or other third-party [~~third party~~] facilities, and related processes necessary to perform such transformation and movement. Distribution does not include activities related to transmission and distribution utility billing services, additional billing services, transmission and distribution utility metering services, and transmission and distribution customer services as defined by this section.

(6) [~~(9)~~] Electrical pulse (or pulse)--The impulses or signals generated by pulse metering equipment, indicating a finite value, such as energy, registered at a point of delivery as defined in the Tariff for Retail Delivery Service.

(7) [~~(10)~~] Electrical pulse service--Use of pulses for any purpose other than for billing, settlement, and system operations and planning.

(8) [~~(11)~~] Electronic data interchange--The computer-application-to-computer-application [~~computer application to computer application~~] exchange of business information in a standard format.

(9) [~~(12)~~] Energy service--As defined in §25.223 of this title (relating to Unbundling of Energy Service).

[~~(13) Existing purchased power contract--A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.~~]

(10) [~~(14)~~] Generation--For purpose of §25.344(g)(2)(A) of this title, generation includes assets, activities, and processes necessary and related to the production of electricity for sale. Generation begins with the acquisition of fuels and their conversion to electricity and ends where the generation company's facilities tie into the facilities of the transmission and distribution system.

[~~(15) Generation assets--All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.~~]

[~~(16) Market value--For non-nuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under PURA §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.~~]

[~~(17) Power generation company--A person that:~~]

[~~(A) generates electricity that is intended to be sold at wholesale;~~]

[~~(B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under PURA §31.002(6); and~~]

[(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.]

(11) [(18)] Pulse metering equipment--Any device, mechanical or electronic, connected to a meter, used to measure electric service for billing, which initiates pulses, the number of which are proportional to the quantity being measured, and which may include external protection devices. Except as otherwise provided in §25.311 of this title (relating to Competitive Metering Services), pulse [Pulse] metering equipment shall be considered advanced metering equipment that shall be owned, installed, operated, and maintained by a transmission and distribution utility and such ownership, installation, operation and maintenance shall not be a competitive energy service [services].

[(19) Purchased power market value--The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.]

[(20) Retail electric provider--A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.]

[(21) Retail stranded costs--Part of net stranded cost associated with the provision of retail service.]

[(22) Standard meter--The minimum metering device necessary to obtain the billing determinants required by the transmission and distribution utility's tariff schedule to determine an end-use customer's charges for transmission and distribution service.]

[(23) Stranded costs--The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of PURA, Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263.]

(12) [(24)] Stranded cost charges--Competition transition charges as defined in §25.5 of this title (relating to Definitions) [this section] and transition charges established pursuant to PURA §39.302(7).

(13) [(25)] System service--Service that is essential to the transmission and distribution of electricity from the point of interconnection of a generation source or third-party electric grid facility, to the point of interconnection with a retail customer or other third-party [third party] facility. System services include, but are not limited to, the following:

(A) the regulation and control of electricity in the transmission and distribution system;

(B) planning, design, construction, operation, maintenance, repair, retirement, or replacement of transmission and distribution facilities, equipment, and protective devices;

(C) transmission and distribution system voltage and power continuity;

(D) response to electric delivery problems, including outages, interruptions, and voltage variations, and restoration of service in a timely manner;

(E) commission-approved public education and safety communication activities specific to transmission and distribution that do not preferentially benefit an affiliate of a utility [the utility's affiliate(s)];

(F) transmission and distribution utility standard metering and billing services as defined by this section;

(G) commission-approved administration of energy savings incentive programs in a market-neutral, nondiscriminatory manner, through standard offer programs or limited, targeted market transformation programs; and

(H) line safety, including tree trimming.

(14) [(26)] Transmission--For purposes of §25.344(g)(2)(B) of this title, transmission relates to system and discretionary services associated with facilities at or above 60 kilovolts necessary to transform and move electricity from the point of interconnection of a generation source or third-party [third party] electric grid facilities, to the point of interconnection with distribution, retail customer or other third-party [third party] facilities, and related processes necessary to perform such transformation and movement. Transmission does not include activities related to transmission and distribution utility billing system services, additional billing services, transmission and distribution utility metering system services, and transmission and distribution utility customer services as defined by this section.

[(27) Transmission and distribution utility--A person or river authority that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under PURA §31.002(6), in a qualifying power region certified under PURA §39.152, but does not include a municipally owned utility or an electric cooperative.]

(15) [(28)] Transmission and distribution utility billing system services--For purposes of §25.344(g)(2)(E) of this title, transmission and distribution utility billing system services relate [Services related] to the production and remittance of a bill to a retail electric provider for the transmission and distribution charges applicable to the retail electric provider's customers as prescribed by PURA §39.107(d), and billing for wholesale transmission service to entities that qualify for such service. Transmission and distribution utility billing system services may include, but are not limited to, the following:

(A) generation of billing charges by application of rates to customer's meter readings, as applicable;

(B) presentation of charges to retail electric providers for the actual services provided and the rendering of bills;

(C) extension of credit to and collection of payments from retail electric providers;

(D) disbursement of funds collected;

(E) customer account data management;

(F) customer care and call center activities related to billing inquiries from retail electric providers;

(G) administrative activities necessary to maintain retail electric provider billing accounts and records; and

[~~(H) an operating billing system; and~~]

(H) [~~(I)~~] error investigation and resolution.

(16) [~~(29)~~] Transmission and distribution utility customer services [~~service~~]--For purposes of §25.344(g)(2)(G) of this title, transmission and distribution customer services relate [~~service relates~~] to system and discretionary services associated with the utility's energy efficiency programs, demand-side management programs, public safety advertising, tariff administration, economic development programs, community support, advertising, customer education activities, and any other customer services.

(17) [~~(30)~~] Transmission and distribution utility metering system services--For purposes of §25.344 of this title, services [~~Services~~] that relate to the installation, maintenance, and polling of an end-use customer's standard meter. Transmission and distribution utility metering system services may include, but are not limited to, the following:

(A) ownership of standard meter equipment and meter parts;

(B) storage of standard meters and meter parts not in service;

(C) measurement or estimation of the electricity consumed or demanded by a retail electric consumer during a specified period limited to the customer usage necessary for the rendering of a monthly electric bill;

(D) meter calibration and testing;

(E) meter reading, including non-interval, interval, and remote meter reading;

(F) individual customer outage detection and usage monitoring;

(G) theft detection and prevention;

[~~(H) customer account maintenance;~~]

(H) [~~(I)~~] installation or removal of metering equipment;

(I) the operation of meters and provision of information to an independent organization, as required by its rules and protocols; and

[~~(J) an operating metering system; and~~]

(J) [~~(K)~~] error investigation and re-reads.

§25.342. Electric Business Separation.

(a) Purpose. The purpose of this section is to identify the competitive electric industry business activities that must be separated from the regulated transmission and distribution utility and performed by a power generation company (PGC), a retail electric provider (REP), or some other business unit pursuant to the Public Utility Regulatory Act (PURA) §39.051. This section establishes procedures for the separation of such business activities.

(b) Application. This section shall apply to electric [~~affected~~] utilities, as defined in §25.5 of this title (relating to Definitions).

(c) Compliance and timing.

[~~(1) Electric utilities must file a business separation plan on or before January 10, 2000, pursuant to PURA §39.051(e).~~]

(1) [~~(2)~~] The commission shall prescribe a schedule for the filing of [~~Notwithstanding any other provision in this section, an electric utility not subject to this section until the expiration of the exemption set forth in PURA §39.102(c), must file~~] a business separation plan [~~on or before 260 days~~] prior to the introduction of customer choice for an electric utility. An [~~expiration of the exemption. Notwithstanding any other provision in this section, on or before the expiration of the exemption set forth in PURA §39.102(c), such an~~] electric utility for which customer choice was not introduced in 2002 shall separate from its regulated utility activities its customer energy services business activities and shall separate its business activities in accordance with [~~from one another into the three units described in~~] subsection (d)[~~(2)~~] of this section.

(2) [~~(3)~~] Upon review of the filing, the commission shall adopt the electric utility's plan for business separation, adopt the plan with changes, or reject the plan and require the electric utility to file a new plan.

(d) Business separation.

(1) An electric utility may not offer competitive energy services [~~after September 1, 2000~~]; however, an electric utility may petition the commission pursuant to §25.343(d) of this title (relating to Competitive Energy Services) for authority to provide to its Texas customers or some subset of its customers any service otherwise identified as a competitive energy service.

(2) Each [~~Not later than January 1, 2002, each~~] electric utility shall separate its business activities and related costs into the following units: power generation company; retail electric provider; and transmission and distribution utility company. An electric utility may accomplish this separation either through the creation of separate nonaffiliated companies or separate affiliated companies owned by a common holding company or through the sale of assets to a third party. An electric utility may create separate transmission utility and distribution utility companies.

(3) Each electric utility, subject to PURA §39.157(d), shall comply with this section in a manner that provides for a separation of personnel, information flow, functions, and operations, consistent with PURA §39.157(d) and §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates).

(4) All transfers of assets and liabilities to separate affiliated or nonaffiliated companies, a power generation company, retail electric provider, or a transmission and distribution utility company during the initial business separation process shall be recorded at book value.

(5) For an electric utility for which customer choice was not introduced in 2002, the commission, in approving a plan under subsection (c) of this section, may prescribe dates for the discontinuation of competitive energy services and the separation of business activities.

(e) Business separation plans. Each [~~On or before January 10, 2000, each~~] electric utility subject to PURA §39.051(e) that has not separated its business functions shall file a business separation plan with the commission according to a commission-approved Business Separation Plan Filing Package (BSP-FP) on a date prescribed by the commission.

(1) The business separation plan shall include, but shall not be limited to, the following:

(A) A description of the financial and legal aspects of the business separation, the functional and operational separations, physical separation, information systems separation, asset transfers during the initial unbundling, separation of books and records, and compliance with §25.272 of this title both during and after the transition period.

(B) A description of all services provided by the corporate support services company, as well as any corporate support services provided by another separate affiliate including pricing methodologies.

(C) A proposed internal code of conduct that addresses the requirements in §25.272 of this title and the spirit and intent of PURA §39.157. The internal code of conduct shall address each provision of §25.272 of this title, and shall provide detailed rules and procedures, including employee training, enforcement, and provisions for penalties for violations of the internal code of conduct.

(D) A description of each competitive energy service provided within Texas by the electric utility, including a detailed plan for completely and fully separating these competitive energy services [~~on or before September 1, 2000~~], as set forth in §25.343 of this title.

(E) Descriptions of all system services, discretionary services, and other services pursuant to subsection (f) of this section to be provided within Texas by the transmission and distribution utility.

(2) To the extent that not all of the detailed information required to be filed on the date prescribed by the commission [~~January 10, 2000~~] is available, the electric utility shall provide a firm schedule for supplemental filings. The commission shall approve only portions of the business separation plan for which complete information is provided.

(f) Separation of transmission and distribution utility services.

(1) Classification of services. Each service offered, or potentially offered, by a transmission and distribution utility shall be classified as one of the following:

(A) System service. The costs associated with providing system service are system-wide costs that [~~which~~] are borne by the retail electric provider serving all transmission and distribution customers.

(B) Discretionary service.

(i) The cost associated with each discretionary service is customer-specific and should be borne only by the retail electric provider serving the transmission and distribution customer who purchases the discretionary service.

(ii) Each discretionary service shall be provided by the transmission and distribution utility on a nondiscriminatory basis pursuant to a commission-approved embedded cost-based tariff.

(iii) The costs associated with providing discretionary services are tracked separately from costs associated with providing system services.

(iv) A discretionary service is not a competitive energy service as defined by §25.341[~~(6)~~] of this title (relating to Definitions).

(C) Petitioned service. Service in which a petition to provide a specific competitive energy service has been granted by the commission pursuant to §25.343(d)(1) of this title.

(D) Other service.

(i) The offering of any other services shall be limited to those services which:

(I) maximize the value of transmission and distribution system service facilities; and

(II) are provided without additional personnel and facilities other than those essential to the provision of transmission and distribution system services.

(ii) If the transmission and distribution utility offers a service under clause (i) of this subparagraph, the transmission and distribution utility shall:

(I) track revenues and to the extent possible the costs for each service separately;

(II) offer the service on a non-discriminatory-basis, and if the commission determines that it is appropriate, pursuant to a commission-approved tariff, and;

(III) credit all revenues received from the offering of this service during the test year after known and measurable adjustments are made to lower the revenue requirement of the transmission and distribution utility on which the rates are based.

(2) Competitive energy services. A transmission and distribution utility shall not provide competitive energy services as defined by §25.341[~~(6)~~] of this title [~~(relating to Definitions)~~] except as permitted pursuant to §25.343[~~(d)(1)~~] of this title.

§25.343. Competitive Energy Services.

(a) Purpose. The purpose of this section is to identify [~~all~~] competitive energy services, as defined in §25.341 of this title (relating to Definitions), that [~~which~~] shall not be provided by affected electric utilities [~~after September 1, 2000~~].

(b) Application. This section applies to electric utilities, as defined by the Public Utility Regulatory Act (PURA) §31.002(6), which include [~~and~~] transmission and distribution utilities as defined by PURA §31.002(19) [~~that provide service in Texas. This section does not apply to municipally owned utilities or electric cooperatives~~]. This section shall not apply to an electric utility under PURA §39.102(c) until the termination of its rate freeze period. This section shall not apply to an electric utility subject to PURA §39.402 until customer choice begins in the utility's service area.

(c) Competitive energy service separation. An electric utility [~~Affected utilities~~] shall not provide competitive energy services, [~~after September 1, 2000~~] except for the administration of energy efficiency programs as specifically provided elsewhere in this chapter, and except as provided in subsection (f) of this section, relating to emergency provision of certain competitive energy services.

(d) Petitions relating to the provision of competitive energy services.

(1) Petition by an electric [~~affected~~] utility to provide a competitive energy service. A utility may petition the commission to provide on an unbundled tariffed basis a competitive energy service that [~~which~~] is not widely available to customers in an area. The utility has the burden to prove to the commission that the service is not widely available in an area. The utility's petition may be filed jointly with an affected person or with commission staff.

(A) Review of petition. In reviewing an electric [~~affected~~] utility's petition to provide a competitive energy service, the commission may consider, but is not limited to, the following:

(i) geographic and demographic factors;

(ii) number of vendors providing a similar or closely related [~~closely-related~~] competitive energy service in the area;

(iii) whether an affiliate of the electric [~~affected~~] utility offers a similar or closely-related competitive energy service in the area;

(iv) whether the approval of the petition would create or perpetuate a market barrier to entry for new providers of the competitive energy service.

(B) Petition deemed approved. A petition shall be deemed approved without further commission action on the effective date specified in the petition if no objection to the petition is filed with the commission and adequate notice has been completed at least 30 [~~thirty~~] days prior to the effective date. The specified effective date must be at least 60 [~~sixty~~] days after the date the petition is filed with the commission. Notice shall be provided to all retail electric providers in Texas that are certified at the time of the petition and through a newspaper publication once a week for two consecutive weeks in a newspaper in general circulation throughout the service area for which the petition is requested. Such [~~newspaper~~] notice shall state in plain language:

(i) the purpose of the petition;

(ii) the competitive energy service that is the subject of the petition; and

(iii) the date on which the petition will be deemed approved if no objection is filed with the commission.

(C) Approval of petition.

(i) If a petition under this paragraph is granted, the utility shall provide the petitioned service pursuant to a fully unbundled, embedded cost-based tariff.

(ii) The utility's petition to offer the competitive energy service terminates three [~~two~~] years from the date the petition is granted by the commission, unless the commission approves a new petition from the utility to continue providing the competitive energy service.

(iii) The costs associated with providing this service shall be tracked separately from other transmission and distribution utility costs.

(2) Petition to classify a service as a competitive energy service or to end the designation of a competitive energy service as a petitioned service. An affected person or the commission staff [~~Office of Regulatory Affairs~~] may petition the commission to classify a service as a competitive energy service or to end the designation of a competitive energy service as a petitioned service. The commission may consider factors including, but [~~is~~] not limited to, the factors in [~~pursuant to~~] paragraph (1) of this subsection (where applicable) when reviewing a petition under this paragraph.

(e) Filing requirements.

(1) An electric utility [~~Affected utilities~~] shall file the following as part of its [~~their~~] business separation plan [~~plans~~] pursuant to §25.342 of this title (relating to Electric Business Separation):

(A) descriptions of each competitive energy service provided by the utility;

(B) detailed plans for completely and fully separating competitive energy services; and

(C) petitions, if any, with associated unbundled tariffs to provide a competitive energy service(s) pursuant to subsection (d)(1) of this section. As part of this filing, affected utilities shall provide all supporting workpapers and documents used in the calculation of the charges for the petitioned services.

(2) An electric utility [~~Affected utilities~~] shall file complete cost information related to paragraph (1) of this subsection pursuant to §25.344 of this title (relating to Cost Separation Proceedings) and the Unbundled Cost of Service Rate Filing Package (UCOS-RFP).

(f) Emergency provision of certain competitive energy services.

(1) Emergency situation. In an emergency situation, an electric utility may provide transformation and protection equipment and transmission and substation repair services on customer facilities described in §25.341(3)(F) of this title. For purposes of this subsection, an "emergency situation" means a situation in which there is a likely risk of serious injury to health, safety, or the environment or a likely risk of a significant interruption to the customer's business activities. In determining whether to provide the competitive energy service in an emergency situation, the utility shall consider the following criteria:

(A) whether the customer's facilities are impaired, are in jeopardy of failing, or present a safety hazard; and

(B) whether the customer has been unable to procure, or is unable to procure within a reasonable time, the necessary transformation and protection equipment or the necessary transmission or substation repair services from a source other than the electric utility.

(2) Notification and due diligence. Prior to providing an emergency service as set forth in paragraph (1) of this subsection, the electric utility shall inform the customer that the requested service is a competitive energy service and that the utility is not permitted to provide the service unless it is an emergency situation. The utility must determine, based on information provided from the customer or by other methods, whether the situation is a emergency situation, as defined in paragraph (1) of this section.

(3) Record keeping and reporting.

(A) Not later than 48 hours after the determination of an emergency situation, the electric utility shall obtain from the customer a statement explaining the emergency situation and indicating that the customer is aware that the service provided by the utility is a competitive energy service.

(B) The electric utility shall maintain for a period of three years a record of correspondence between the customer and the utility pertaining to the emergency provision of a competitive energy service in accordance with this subsection, including the statement required by subparagraph (A) of this paragraph.

(C) The electric utility shall include in a clearly identified manner the following information for the prior calendar year (January 1 through December 31) in its service quality report filed under §25.81 of this title (relating to Service Quality Reports):

(i) the number of instances in which the utility provided a competitive energy service pursuant to this subsection in the prior calendar year; and

(ii) a brief description of each event, excluding any customer-specific information, and the utility's action to respond to the emergency situation.

(4) Discretionary service charge for provision of competitive energy services in emergency situation. The charge for providing service pursuant to this subsection shall be based on a fully unbundled, embedded cost-based discretionary service tariff. Within 30 days of the effective date of this section, an electric utility shall file with the commission a tariff to implement this subsection.

(5) Commission review. Upon request, an electric utility shall make available to the commission all required records regarding the provision of competitive energy services pursuant to this subsection.

§25.346. Separation of Electric Utility Metering and Billing Service Costs and Activities.

(a) Purpose. The purpose of this section is to identify and separate electric utility metering and billing service activities and costs for the purposes of unbundling.

(b) Application. This section shall apply to electric utilities as defined in Public Utility Regulatory Act (PURA) §31.002. This section shall not apply to an electric utility under PURA §39.102(c) until the termination of its rate freeze period.

(c) Separation of transmission and distribution utility billing system service costs.

(1) Transmission and distribution billing system services shall include costs related to the billing services described in §25.341(28) of this title (relating to Definitions).

(2) Charges for transmission and distribution billing system services shall not include any additional capital costs, operation and maintenance expenses, and any other expenses associated with billing services as prescribed by PURA §39.107(e).

(d) Separation of transmission and distribution utility billing system service activities.

(1) Transmission and distribution utility billing system services as defined [~~described~~] in §25.341[~~(28)~~] of this title shall be provided by the transmission and distribution utility.

(2) The transmission and distribution utility may provide additional retail billing services pursuant to PURA §39.107(e).

(3) Additional retail billing services pursuant to PURA §39.107(e) shall be provided on an unbundled discretionary basis pursuant to a commission-approved embedded cost-based tariff.

(4) The transmission and distribution utility may not directly bill an end-use retail customer for services that the transmission and distribution utility provides except when the billing is incidental to providing retail billing services at the request of a retail electric provider pursuant to PURA §39.107(e).

(e) Uncollectibles and customer deposits.

(1) The retail electric provider is responsible for collection of its charges from retail customers and measures to secure payment [~~retail customer uncollectibles and deposits~~].

(2) For the purposes of functional cost separation in §25.344 of this title (relating to Cost Separation Proceedings), retail customer uncollectibles and deposits shall be assigned to the unregulated function, as prescribed by §25.344(g)(2)(I) of this title.

(f) Separation of transmission and distribution utility metering system service costs. Transmission and distribution utility metering system services shall include costs related to the transmission and distribution utility metering system services as defined in §25.341[~~(30)~~] of this title.

(g) Separation of transmission and distribution utility metering system service activities.

(1) Metering services before the introduction of customer choice.

(A) An electric utility [~~Affected utilities~~] shall continue to provide metering services pursuant to commission rules and regulations, but shall [~~provided that affected utilities do~~] not engage in the provision of competitive energy services as defined by §25.341[~~(6)~~] of this title and prescribed by §25.343 of this title (relating to Competitive Energy Services).

(B) An electric utility [~~Affected utilities~~] may continue to use metering equipment installed, operated, and maintained by the [~~affected~~] utility prior to the introduction of customer choice [~~effective date of this section~~], but may not use the information gained from its provision of the meter or metering services as defined in §25.341(3)[~~(6)~~](G) of this title except as permitted in §25.341(7)[~~(10)~~] of this title.

(C) When requested by the end-use customer, an electric [~~affected~~] utility shall charge the end-use customer the incremental cost for the replacement of an end-use customer's meter with an advanced meter owned, operated, and maintained by the electric [~~affected~~] utility.

(2) Metering services on and after the introduction of customer choice until metering services become competitive. On the introduction of customer choice in a service area, metering services as described by §25.341(17)[~~(30)~~] of this title for the area shall continue to be provided by the transmission and distribution utility affiliate (or successor in interest) of the electric utility that was serving the area before the introduction of customer choice, but the transmission and distribution [~~provided that the affected~~] utility shall [~~does~~] not engage in the provision of competitive energy services as defined by §25.341[~~(6)~~] of this title and prescribed by §25.343 of this title.

(A) Standard meter.

(i) The standard meter shall be owned, installed, and maintained by the transmission and distribution utility except as prescribed by §25.311 of this title (relating to Competitive Metering Services) [~~PURA §39.107(a) and PURA §39.107(b)~~].

(ii) The transmission and distribution utility shall bill a retail electric provider for non-bypassable charges based upon the measurements obtained from each end-use customer's standard meter.

(iii) If the retail electric provider requests the replacement of the standard meter with an advanced meter, the transmission and distribution utility shall charge the retail electric provider the incremental cost for the replacement of the standard meter with an advanced meter owned, operated, and maintained by the transmission and distribution utility.

(iv) Without authorization from the retail electric provider, the transmission and distribution utility's use of advanced meter data shall be limited to that energy usage information necessary for the calculation of transmission and distribution charges in accordance with that end-use customer's transmission and distribution rate schedule.

(B) Meter reading. Nothing in this section precludes the retail electric provider from accessing the transmission and distribution utility's standard meter for the purposes of determining an end-use customer's energy usage.

(C) End-use customer meters. Nothing in this section precludes the end-use customer or the retail electric provider from owning, installing, and maintaining metering equipment on the customer-premise side of the standard meter.

(D) Advanced metering services.

(i) The transmission and distribution utility shall not provide any advanced metering equipment or service that is deemed a competitive energy service under §25.343 of this title.

(ii) A transmission and distribution utility [~~Affected utilities~~] may continue to use metering equipment installed, operated, and maintained by the transmission and distribution [~~affected~~] utility consistent with the effective date established under paragraph (1)(B) of

this subsection, but may not use the data obtained [~~information gained~~] from its provision of the meter or metering services [~~as defined in §25.341(6)(G) of this title~~], except as permitted in subchapter O of this chapter (relating to Unbundling and Market Power) [~~§25.341(10) of this title~~].

[~~*(iii)* Without authorization from the retail electric provider, the transmission and distribution utility shall not use any advanced metering data except as prescribed by subparagraph (A)(iv) of this paragraph.~~]

(iii) [~~(iv)~~] The installation of advanced metering equipment on the transmission and distribution utility's standard meter must be performed by transmission and distribution utility personnel or by contractors under the supervision of the utility.

(iv) [~~(v)~~] For services relating to clause (iii) [~~(iv)~~] of this subparagraph, the transmission and distribution utility's charges to the retail electric provider for the installation and removal of any advanced metering equipment shall be reasonable and non-discriminatory and made pursuant to a commission-approved embedded cost based tariff. Except as otherwise provided in this section or by a commission order [~~Unless authorized by clause (ii) of this subparagraph or by the commission~~], the advanced metering equipment shall not be provided by the transmission and distribution utility.

(v) [~~(vi)~~] Advanced metering equipment provided to the transmission and distribution utility for installation onto the standard meter shall meet all current industry safety standards and performance codes consistent with §25.121 of this title (relating to Meter Requirements).

(vi) [~~(vii)~~] All advanced metering services and related costs shall be borne by the retail electric provider, except for charges for pulse metering equipment, installation and removal, which shall be borne by the entity executing the pulse metering equipment installation agreement.

(h) Competitive energy services.

(1) Nothing in this section is intended to affect the provision of competitive energy services, including those that require access to the customer's meter.

(2) An electric [~~affected~~] utility shall not provide any service that is deemed a competitive energy service under §25.341[~~(6)~~] of this title except as provided under §25.343[~~(d)(1)~~] of this title.

(i) Electronic data interchange.

(1) Standards. All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall transmit data in accordance with standards and procedures adopted by the commission or the independent organization.

(2) Settlement. All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall abide by the settlement procedures adopted by the commission or the independent organization.

(3) Costs. Transmission and distribution utilities shall be allowed to recover such costs as prudently incurred in abiding by this subsection, to the extent not collected elsewhere, such as through the Electric Reliability Council of Texas administrative fee [~~ERCOT-ISO fee~~].

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

Filed with the Office of the Secretary of State on May 15, 2003.

TRD-200303018
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 29, 2003
For further information, please call: (512) 936-7308

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. CERTIFICATION AS A CPA

SUBCHAPTER B. CERTIFICATION BY EXAMINATION

22 TAC §511.21

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.21, concerning Examination Application.

The amendment to §511.21 will clarify that the exam fee will be collected by the National Association of State Boards of Accountancy, creates an eligibility fee paid to the board, and states that the board will evaluate applications and establish dates of eligibility for each applicant.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything new or additional.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the state or local governments to do or not do anything new or additional.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything new or additional.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the board's rules in this area will be updated for the new computer-based Uniform CPA examination.

The probable economic cost to persons required to comply with the amendment will be either zero or negligible because exam applicants are currently paying exam fees and complying with current exam application procedures.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on

Wednesday, June 25, 2003. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because incremental increases in fees, if any, is too small to be considered an adverse economic effect. Also, the benefit from the cost is significant.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act, §901.301 which authorizes the board to pass rules establishing procedures regarding the examination and §901.304 which authorizes the board to set the exam fee by rule.

No other article, statute or code is affected by this proposed amendment.

§511.21. Examination Application.

(a) All applications to take the Uniform CPA Examination shall be made on forms prescribed by the board and shall also be in compliance with board rules and with all applicable laws.

(b) Applicants shall submit their social security number on the application form. Such information shall be considered confidential and can only be disclosed under the provisions of the Act.

(c) Applicants must sign a statement on the application that states that if the applicant's examination is [~~papers are~~] lost, the limit of liability for which the board may be held responsible will be the amount of the exam fee collected by the National Association of State Boards of Accountancy.

[~~(d) Applications for the November examination shall be received in the Board office by September 15 and applications for the May exam shall be received by March 15.~~]

(d) [~~(e)~~] Each applicant for the Uniform CPA Examination must pay an eligibility fee to the board [~~a fee~~] for each subject [~~on the examination~~] for which the applicant requests to take [~~is eligible~~]. The actual fee set by the board is identified in §521.14 [~~§521.2~~] of this title (relating to Eligibility [~~Examination~~] Fees). Application forms not accompanied by the proper fee or required documents shall not be considered complete. The withholding of information, a misrepresentation, or any untrue statement on the application or supplemental documents will be cause for rejection of the application.

[~~(f) Applicants shall designate on the application the location at which they prefer to take the examination. The board will assign applicants to an examination site, and after such assignment, the applicant may not thereafter change examination sites without written authorization from the board.~~]

(e) [~~(g)~~] Each reexamination applicant must continue to show that the applicant remains qualified in all respects to take the examination.

(f) The board shall evaluate all examination applications and establish dates of eligibility for each approved application, which will be used by the testing vendor or other organization to schedule and test an applicant.

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

Filed with the Office of the Secretary of State on May 15, 2003.

TRD-200303020
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: June 29, 2003
For further information, please call: (512) 305-7848

SUBCHAPTER D. CPA EXAMINATION

22 TAC §511.72

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.72, concerning Uniform Examination.

The amendment to §511.72 will authorize the board to contract with a testing vendor to administer the CPA exam at sites that are approved and monitored by the board during months to be determined, re-name the exam subjects and require exam applicants to have an exam authorization form and another type of government issued identification.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything new or additional.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the state and local governments to do anything new or additional.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything new or additional.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the procedures for the new computer-based uniform CPA exam will be established.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not require exam applicants to do anything new or additional.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Wednesday, June 25, 2003. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not require small businesses to do or not do anything new or additional.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.301 which authorizes the board to contract for the Uniform CPA exam.

No other article, statute or code is affected by this proposed amendment.

§511.72. Uniform Examination.

(a) The board shall administer or may contract with a testing vendor for the administration of the examination for a certificate as a certified public accountant. The examination may be offered at the board's office and at testing facilities within the state that are approved and monitored by the board or its designee. The examination shall be offered during scheduled months as determined by the American Institute of Certified Public Accountants, the National Association of State Boards of Accountancy, and the testing vendor. [~~twice annually during the months of May and November in such cities in Texas as the board shall designate.~~]

(b) The board shall utilize the uniform CPA examination available from the American Institute of Certified Public Accountants covering the following subjects:

(1) auditing and attestation;

(2) business environment and concepts [~~law and professional responsibilities~~];

(3) regulation [~~accounting and reporting~~]; and

(4) financial accounting and reporting.

(c) All candidates taking the examination are required to have in their possession the board authorization form [~~issued laminated identification card or other board authorized form~~] and one other government issued form of identification containing a photograph of the candidate. [~~Both forms of identification shall be in view during the entire examination.~~]

(d) All candidates taking the examination are required to sign a statement of confidentiality and conduct, which must be followed during the entire 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.

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §511.73

The Texas State Board of Public Accountancy (Board) proposes new §511.73, concerning Notice to Candidate to Schedule Taking a CPA Exam Subject.

The new §511.73 will require exam applicants to pay an exam fee and to schedule to take the exam at a board approved location.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero because the new rule does not require the state to do or not do anything new or additional.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero because the new rule does not require the state and local governments to do or not do anything new or additional.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be zero because the new rule does not require the state to do or not do anything new or additional.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be that exam applicants will know that they are required to pay an exam fee and schedule their exam.

The probable economic cost to persons required to comply with the new rule will be the incremental increase between the current fees for one, two or four subjects and the new fees that vary according to the exam subject.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on Wednesday, June 25, 2003. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the incremental increase between the current fees for one, two or four subjects and the new fees that vary according to the exam subject do not rise to level of adverse economic effect.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.304 which authorizes the board to set the exam fee by rule.

No other article, statute or code is affected by this proposed new rule.

§511.73. Notice to Candidate to Schedule Taking a CPA Exam Subject.

(a) The board shall inform examination applicants of their eligibility to take the CPA examination.

(b) The applicant is required to pay an examination fee to the National Association of State Boards of Accountancy for the examination subject for which the applicant is eligible. The actual fee set by the board is identified in 521.2 of this title (relating to Examination Fees).

(c) After payment of the examination fee, the applicant is required to schedule to take the subject at a board approved location.

(d) The payment of the required examination fee and taking of the CPA examination subject must be completed within the time of eligibility as determined by the board. Applicants not in compliance with this section must reapply to the board for the establishment of a new eligibility.

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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Rande Herrell
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22 TAC §511.76

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.76 concerning Examination Refund Policy.

The amendment to §511.76 will cause the eligibility fee paid to the board to be non-refundable, allow the board to request a refund from NASBA on behalf of an applicant, limit the refund to computer time and exam grading, allows NASBA to retain a refund processing fee and lists the conditions for a refund.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything new or additional.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the state or local governments to do or not do anything new or additional.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything new or additional.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the refund procedures and policies for the new computer-based examination will be known.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not require anyone to do or not do anything new or additional.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Wednesday, June 25, 2003. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not require small businesses to do or not do anything new or additional.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 2001) which authorizes the board to adopt rules deemed necessary or advisable to effectuate the Act and §901.304 which authorizes the board to provide for refunds by rule.

No other article, statute or code is affected by this proposed amendment.

§511.76. Examination Refund Policy.

(a) The eligibility fee paid to the board is not refundable or transferable. [~~The board will grant a full refund of the examination fee if the applicant withdraws from the examination and the board receives notification in writing prior to the deadline for applying for the examination (March 15 or September 15).~~]

(b) The board, on behalf of the applicant, may request a refund of a portion of the examination fee paid to NASBA for scheduling a section of the CPA examination. The portion of the examination fee that is eligible for a refund is the fee paid for computer seat time and exam grading. A charge for refund processing may be withheld by NASBA. Examination fee refunds are subject to the following conditions.[~~The board will grant a refund of one-half of the total examination fee paid if: the applicant submits an incomplete application for the examination and does not remedy the deficiency, and as a result is not permitted to take the examination; or the applicant withdraws after the filing deadline because of extreme hardship.~~]

(1) The applicant because of extreme hardship is precluded from scheduling or taking the section of the CPA Examination. Extreme hardship is [~~shall be~~] defined as a serious illness of the candidate or member of the immediate family or death of an immediate family member.Immediate family member is a spouse, child or parent. Any other extreme hardship situation will be reviewed on a case-by-case basis by the board.

(2) Request for refund[~~All requests for refunds~~] based on extreme hardship[~~hardships~~] must be in writing. Documentation[~~and provide documentation~~] of the extreme hardship that precluded the applicant from scheduling or taking the[~~requiring withdrawal from the examination. The requests for refunds for the May~~] examination must be received by the board not later than 30 days after the applicant's eligibility to take the section of the examination expires. [~~on or before the 15th of November following the examination. The request for refund for the November examination must be received by the board on or before the 15th of May following the examination.~~]

(c) No examination fee will be transferred to a subsequent 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.

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Rande Herrell
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22 TAC §511.77

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.77 concerning Grading.

The amendment to §511.77 will state that a passing grade on the computer-based examination will be established through a procedure that will be approved by the board and will state that the board will establish a method of tracking and recording a candidate's grades.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything new or additional.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the state and local governments to do or not do anything new or additional.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything new or additional.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the grading for the computer-based exam will be approved by the board and that grades will be tracked.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not require anyone to do or not do anything new or additional.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Wednesday, June 25, 2003. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not require anyone to do or not do anything new or additional.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.307 which authorizes the board to adopt rules regarding grading of the examination.

No other article, statute or code is affected by this proposed amendment.

§511.77. Grading.

Grading of the examination shall be accomplished by the American Institute of Certified Public Accountants, subject to the approval by the board. The candidate must attain the uniform passing grade established

through a psychometrically acceptable standard-setting procedure approved by the board. The current minimum passing grade is 75%. The board shall establish a method for the accurate tracking and recording of a candidate's grade.[A grade of at least 75% on each subject shall be required as a passing grade for the entire examination.] Not later than the 30th day after the day on which the board receives a candidate's grades from the grading authority, the candidate will be notified of the grades unless board action is pending and the individual is precluded from receiving the examination results until the board action is resolved. In no event will any information concerning a candidate's performance on the examination be given to anyone other than the candidate unless the board has written authorization to do so.

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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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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22 TAC §511.80

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.80 concerning Granting of Credit.

The amendment to §511.80 will state the conditions under which exam candidates may earn examination credits for exams before and after implementation at the uniform computer-based exam and will explain the transfer of credit from one type of exam to the other.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the state is not required to do or not do anything new or additional.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the state and local government is not required to do or not do anything new or additional.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the state is not required to do or not do anything new or additional.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be exam candidates will know how their exam credits are earned, how credits are transferred from one exam to the other and the life of the credits.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not require anyone to do or not do anything new or additional.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Wednesday, June 25, 2003. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not require small businesses to do or not do anything new or additional.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.310 which authorizes the board to adopt rules on conditional examination credit.

No other article, statute or code is affected by this proposed amendment.

§511.80. Granting of Credit.

(a) The board shall grant [conditional] credit to a candidate for the satisfactory completion of the [written] Uniform Certified Public Accountant Examination (UCPAE) provided the candidate earns a passing grade as determined by board rule on the subject. The credit shall be valid for eighteen months from the actual date the candidate took the subject.[under the following conditions:]

[(1) the candidate takes all parts of the examination for which the candidate is eligible; and]

[(2) the candidate earns a grade of 75 or higher on any two subjects of the examination; and]

[(3) the candidate scores a minimum grade of 50 on each subject not passed at the examination.]

[(b) The board shall grant credit after the establishment of conditional credit to a candidate for the satisfactory completion of any subject under the following conditions:]

[(1) the candidate takes all parts of the examination for which the candidate is eligible; and]

[(2) the candidate earns a grade of 75 or higher on one or more subjects of the examination; and]

[(3) the candidate scores a minimum grade of 50 on each subject not passed at the examination.]

(b) [(c)] A candidate who earned [conditional] credit(s) after implementation of the computer-based examination[September 1,

1989,] must pass the remaining subjects within the next eighteen months. Should a candidate's exam credit be invalidated due to the expiration of eighteen months without earning credit on the remaining subjects,[six consecutive examinations or forfeit credits received. Although the candidate loses credits at the end of such six consecutive examinations] the candidate remains qualified to take [sit for] the examination.

(c) A candidate who earned conditional credit(s) on the UCPAE prior to the implementation of the computer-based examination must pass the remaining subjects within the next six consecutive examinations or eighteen months, whichever is less, from the actual date the candidate earned conditional credit(s). Credit(s) earned for each subject(s) offered on the written UCPAE will transition to the computer-based examination as follows:

(1) credit earned for Auditing will equate to credit for Auditing and Attestation;

(2) credit earned for Financial Accounting and Reporting will equate to credit for Financial Accounting and Reporting;

(3) credit earned for Accounting and Reporting will equate to credit for Regulation; and

(4) credit earned for Business Law and Professional Responsibilities will equate to credit for Business Environment and Concepts.

(d) A candidate receiving and retaining credit for every subject on the UCPAE, within an eighteen month period, subject to the limitations imposed by the Act, shall be considered by the board to have completed the examination and may make application for certification as a certified public accountant.

(e) A candidate who has received and retained credit for any or all subjects on the UCPAE may transfer such credits to another licensing jurisdiction if the candidate pays in advance a transfer fee set by board rule as identified in §521.7 of this title (relating to Fee for Transfer of 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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Rande Herrell
General Counsel
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CHAPTER 517. TEMPORARY PRACTICE IN TEXAS

22 TAC §517.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §517.1, concerning Temporary Practice.

The amendment to §517.1 will delete any reference or implication that an individual CPA might be able to obtain a Temporary License and states the type of professional entities that are eligible to apply for temporary licensure.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the state and local governments to do or not do anything.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that possibly misleading language has been removed from the rule.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not require anyone to do or not do anything.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Wednesday, June 25, 2003. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not require small businesses to do or not do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§517.1. Temporary Practice.

(a) A certified public accountancy firm of another state that does not hold a firm license under the Public Accountancy Act of Texas may temporarily practice in this state on professional business incident

to the firm's regular practice outside this state if an application for a temporary permit is approved by the board. The temporary practice must conform with the Act, laws of Texas and the Board's Rules.[~~In order for a non-Texas CPA or non-Texas public accounting firm to conduct professional business in Texas on a temporary basis, an application for a temporary permit must be submitted to the board. The temporary practice must conform with the Act, laws of Texas and the Board's Rules of Professional Conduct.~~]

(b) Temporary practice means the practice of public accountancy in Texas on a temporary basis in conjunction with a regular practice outside of Texas by a [~~person who is not a member, partner, shareholder, or employee of~~ a] public accounting firm not licensed[~~registered~~] in Texas.

(c) A temporary practice in Texas may be conducted by:

[~~(1) a certified public accountant of another state;~~]

(1) [~~(2)~~] a partnership,[~~or~~] a corporation, limited liability company, limited liability partnership, or sole proprietorship composed of at least a majority[~~entirely~~] of certified public accountants of another state; or

(2) [~~(3)~~] any accounting firm[~~accountant~~] who holds a current certificate in good standing, or a current valid license issued by a foreign country, constituting a recognized qualification for the practice of public accountancy in such country.

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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Rande Herrell

General Counsel

Texas State Board of Public Accountancy

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22 TAC §517.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §517.2, concerning Application for Temporary Permit.

The amendment to §517.2 will delete any reference or implication that an individual CPA might be able to obtain a Temporary License and states the type of professional entities that are eligible to apply for temporary licensure.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the state or local governments to do or not do anything.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that possibly misleading language has been removed from the rule.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not require anyone to do or not do anything.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Wednesday, June 25, 2003. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not require small businesses to do or not do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§517.2. Application for Temporary Permit.

(a) An application for a temporary permit shall be made on a form prescribed by the board and submitted to the executive director for approval.

(1) The application must contain:

[~~(A) the identity of the person;~~]

(A) [~~(B)~~] the identity of the firm;

(B) [~~(C)~~] the firm address;

(C) [~~(D)~~] a list of all partners or individuals of the firm who will be practicing in Texas under provisions of the permit;

(D) [~~(E)~~] a verification by the state or country that has permanent regulatory authority over [~~the individual and~~] the partnership, [~~and/or professional~~] corporation, limited liability company, limited liability partnership or sole proprietorship is in good standing and is licensed to practice public accountancy in that state or country.

(2) The application must be submitted with the requisite fee.

(3) Upon approval of the application the board shall issue a temporary permit to be valid for not more than 180 days. [~~The board may not issue more than one permit to a person or firm during any three-year period.~~]

(b) A firm[~~person~~] coming into this state to perform a peer review or report review under an approved peer[~~quality~~] review program is exempt from obtaining a temporary permit but must conduct the review in conformity with the Act, the laws of Texas and the Board's Rules of Professional Conduct.

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

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CHAPTER 521. FEE SCHEDULE

22 TAC §521.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.2 concerning Examination Fees.

The amendment to §521.2 will establish the fee structure for the computer-based CPA examination.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything new or additional.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the state or local governments to do or not do anything new or additional.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything new or additional.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the fees for the uniform computer-based CPA examination will be established.

The probable economic cost to persons required to comply with the amendment will be the incremental increase between the current fees for one, two or four subjects and the new fees that vary according to the exam subject.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Wednesday, June 25, 2003. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the incremental increase between the current fees for one, two or four subjects and the new fees that vary according to the exam subject do not rise to level of adverse economic effect.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.304 which authorizes the Board to collect a fee for the uniform CPA examination.

No other article, statute or code is affected by this proposed amendment.

§521.2. Examination Fees.

(a) The following fees shall be effective for the Uniform CPA Examination, and do not include the fee for the Application of Intent.

(b) Until the implementation of the computer-based CPA examination, the[~~The~~] fee for the initial examination conducted pursuant to the Act shall be $234.00. The fee for any examination shall be apportioned as follows:

(1) eligible for one subject--$73.50;

(2) eligible for two subjects--$117.00; and

(3) eligible for four subjects--$234.00.

(c) Upon implementation of the computer-based CPA examination, the following fees shall become effective, and do not include the eligibility fee.

(1) eligible for Auditing and Attestation--$134.50;

(2) eligible for Financial Accounting and Reporting--$126.00;

(3) eligible for Regulation--$109.00; and

(4) eligible for Business and Economic Concepts--$100.50.

(d) All examination fees shall be paid to the National Association of State Boards of Accountancy.

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

Filed with the Office of the Secretary of State on May 15, 2003.

TRD-200303029
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: June 29, 2003
For further information, please call: (512) 305-7848

CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION
SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION STANDARDS

22 TAC §523.34

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.34 concerning Course Content and Board Approval after January 1, 2004.

The amendment to §523.34 will change the rule caption and the effective date of the rule from September 1, 2003 to January 1, 2004.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the rule amendment does not require the state to do or not do anything additional or new.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the rule amendment does not require the state and local governments to do or not do anything additional or new.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the rule amendment does not require the state to do or not do anything additional or new.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the rule will not be effective until January 1, 2004 which allows four additional months for ethics instructors and course offerors to prepare.

The probable economic cost to persons required to comply with the amendment will be zero because they are already required to comply with the rule and the amendment merely delays the implementation of the rule.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on Wednesday, June 25, 2003. Comments should be addressed to General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to the General Counsel's attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because small businesses are already required to comply with this rule and the amendment merely delays its effective date by four months.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, Sections 901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and 901.411 which authorizes the board to adopt rules regarding Continuing Professional Education.

No other article, statute or code is affected by this proposed amendment.

§523.34. Course Content and Board Approval after January 1, 2004[~~September 1, 2003~~]

(a) Effective January 1, 2004[~~September 1, 2003~~] the content of an ethics course must be submitted to and approved by the continuing professional education (CPE) committee of the board for initial approval and every three years thereafter. Course content shall be approved only after the developer of the course demonstrates, either in a live instructor format or a computer-based interactive format, as defined in §523.1(b)(5) of this title (relating to Continuing Professional Education Purpose and Definitions), that the course meets the following objectives:

(1) the course shall be designed to teach CPAs to achieve and maintain the highest standards of ethical conduct;

(2) the course shall be designed to teach the core values of the profession, integrity, objectivity and independence, as ethical principles in addition to rules of conduct;

(3) the course shall be designed to teach compliance with the spirit and intent of the Rules of Professional Conduct, in addition to technical compliance with the Rules; and

(4) the course shall address ethical considerations and the application of the Rules of Professional Conduct to all aspects of the professional accounting work whether performed by CPAs in client practice or CPAs who are not in client practice.

(b) The ethics course must be taught only by instructors approved by and under contract to the board. The board will contract with any instructor wishing to offer this course who can demonstrate that:

(1) the instructor is a certified public accountant licensed in Texas or that the instructor is team teaching with a certified public accountant licensed in Texas and that both have completed the board's

ethics training program within the last three years or as required by the board;

(2) the instructor's certificate or license has never been suspended or revoked for violation of the Rules of Professional Conduct; and

(3) the instructor is qualified to teach ethical reasoning because he or she has:

(A) experience in the study and teaching of ethical reasoning; and

(B) formal training in organizational or ethical behavior instruction.

(c) A sponsor of an approved ethics course shall comply with the board rules concerning sponsors of CPE and shall provide its advertising materials to the board's CPE committee for approval. Such advertisements shall:

(1) avoid commercial exploitation;

(2) identify the primary focus of the course; and

(3) be professionally presented and consistent with the intent of §501.82 of this title (relating to Advertising).

(d) Board Rules and Ethics courses will be reevaluated every three years or as required by the board.

(e) As part of each course, the sponsor shall administer a test to determine whether the program participants have obtained a basic understanding of the course content, including the need for a high level of ethical standards in the accounting profession.

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

Filed with the Office of the Secretary of State on May 15, 2003.

TRD-200303030
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 305. CONSOLIDATED PERMITS

The Texas Commission on Environmental Quality (commission) proposes amendments to §§305.2, 305.45, 305.49, and 305.50.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 405, 77th Legislature, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The Texas Geoscience Practice Act (the Act) requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The primary purpose of the proposed amendments is to establish regulations for the public practice of geoscience in conformance with the Act by requiring a person who prepares and submits geoscientific information to the commission to be a licensed professional geoscientist. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act. According to the bill analysis prepared at the time of passage, the ultimate purpose of the Act was public safety through the public registration of the practice of geoscience.

SECTION BY SECTION DISCUSSION

Throughout these sections, the commission has revised the words "shall" and "must," when needed, to reflect guidance provided in the Legislative Council's Drafting Manual. Administrative changes are also proposed in accordance with Texas Register requirements and to be consistent with other commission rules.

Proposed §305.2, Definitions, amends the introductory paragraph by deleting the word "shall" and the phrase "unless the context clearly indicates otherwise." The definition of licensed professional geoscientist is proposed to be added as new paragraph (20) as a geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice. The definitions of CWA and person are proposed to be deleted because they are defined in 30 TAC Chapter 3, Definitions. The existing paragraphs are proposed to be renumbered accordingly. A corrected legal citation to Texas Health and Safety Code, Chapter 361, is proposed in renumbered paragraph (41) in the definition of solid waste permit since Texas Civil Statutes, Article 4477-7, was repealed in 1989.

Proposed §305.45(a), Contents of Application for Permit, substitutes "must" for "shall." Subsection (a)(8) is proposed to be amended to include licensed professional geoscientist or licensed professional engineer as one of the possible persons who may be required to make a supplementary technical report. The text has also been modified to indicate that any person who is submitting a report shall be competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made.

Proposed §305.49(a), Additional Contents of Application for an Injection Well Permit, substitutes "must" for "shall." Subsection (a)(9) is proposed to be amended to require that a licensed professional geoscientist or licensed professional engineer prepare the delineation of any aquifer or portion of an aquifer for which exempt status is sought.

Proposed §305.50, Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order, amends subsection (b)(6) by adding the requirements that all engineering and geoscientific information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer or licensed professional geoscientist, and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act and the Texas Geoscience Practice Act and the licensing and registration boards under these acts. Paragraph (4) is proposed to be amended to make the verb present tense instead of future tense. In subparagraph (F), it is proposed to correct the pronoun introducing the restrictive clause modifying the noun "permit" from "which" to "that," substitute "must" for "shall," and require that the information delineating all faults within 3,000 feet

of the facility be provided by a licensed professional geoscientist or licensed professional engineer. Paragraph (6) is proposed to be amended to correct the pronoun introducing two restrictive clauses modifying the noun "application" from "which" to "that" and include a conjunction between the two clauses, and require that the hydrogeologic report be prepared by a licensed professional geoscientist or licensed professional engineer.

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency; however, there may be fiscal implications to the agency if the agency elects to reimburse staff for the annual renewal fees. The fees associated with obtaining the professional geoscientist license is $200 to cover the application and first-year license, and $150 per year after the first year.

Ms. Conrad also determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the commission. The proposed rules might impact other state agencies or local governments with staff geologists who need to become licensed under these rules. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has 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 is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined 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, 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 establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules are intended to establish procedures to require that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists. Therefore, it is not anticipated that the proposed rules will 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 commission concludes that these proposed rules do not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, 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.

In this case, the proposed amendments to Chapter 305 do not meet any of these requirements. First, there are no federal standards that these rules would exceed. Second, the proposed rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these proposed rules. Fourth, the commission proposes these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

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

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The proposed rules would substantially advance this stated purpose by requiring that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulations do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rulemaking. These rules simply require that specific portions of applications or necessary data submitted to the commission be produced, signed, sealed, and dated by a qualified professional individual who has demonstrated his or her qualifications by obtaining a license to engage in the public practice of geoscience from the Texas Board of Professional Geoscientists. These rules do not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the proposed rule changes are administrative in nature, do not modify or alter standards set forth in existing rules, and do not govern or authorize any actions subject to the CMP. The proposed rulemaking would require a person who prepares and submits geoscientific information to the agency to be a licensed professional geoscientist. The commission invites public comment on the consistency determination of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., June 30, 2003, and should reference Rule Log Number 2001-051B-305-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §305.2

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§305.2. Definitions.

The definitions contained in Texas Water Code, §§26.001, 27.002, and 28.001, and Texas Health and Safety Code, §§361.003, 401.003, and 401.004, [~~shall~~] apply to this chapter. The following words and terms, when used in this chapter, [~~shall~~] have the following meanings[~~, unless the context clearly indicates otherwise~~].

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

[~~(7) CWA--Clean Water Act (formerly referred to as the Federal Water Pollution and Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, 33 United States Code, 1251 *et seq.*~~]

(7) [~~(8)~~] Daily average concentration--The arithmetic average of all effluent samples, composite, or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

(A) For domestic wastewater treatment plants--When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

(B) For all other wastewater treatment plants--When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

(8) [~~(9)~~] Daily average flow--The arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period or during the period of daily discharge if less than 24 hours. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

(9) [~~(10)~~] Direct discharge--The discharge of a pollutant.

(10) [~~(11)~~] Discharge monitoring report [~~Monitoring Report~~] (DMR)--The EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.

(11) [~~(12)~~] Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid, liquid, or hazardous waste into or on any land, or into or adjacent to any water in the state so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwaters.

(12) [~~(13)~~] Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(13) [~~(14)~~] Effluent limitation--Any restriction imposed on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters in the state.

(14) [~~(15)~~] Facility--Includes:

(A) all contiguous land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of waste, or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units;

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner and operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies

to facilities implementing corrective action under Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste);

(15) [(16)] Facility mailing list--The mailing list for a facility maintained by the commission in accordance with 40 Code of Federal Regulations (CFR) §124.10(c)(1)(ix) and §39.7 of this title (relating to Mailing Lists [Public Notice]). For Class I injection well underground injection control permits, the mailing list also includes the agencies described in 40 CFR §124.10(c)(1)(viii).

(16) [(17)] Functionally equivalent component--A component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

(17) [(18)] Indirect discharger--A non-domestic [non-domestic] discharger introducing pollutants to a publicly owned [publicly-owned] treatment works.

(18) [(19)] Injection well permit--A permit issued in accordance with Texas Water Code, Chapter 27.

(19) [(20)] Land disposal facility--Includes landfills, waste piles, surface impoundments, land farms, and injection wells.

(20) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(21) - (27) (No change.)

[(28) Person--An individual, corporation, organization, government, governmental subdivision or agency, business trust, estate, partnership, or any other legal entity or association.]

(28) [(29)] Post-closure order--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units.

(29) [(30)] Primary industry category--Any industry category listed in 40 Code of Federal Regulations Part 122, Appendix A, adopted by reference by §305.532(d) of this title (relating to Adoption of Appendices by Reference).

(30) [(31)] Process wastewater--Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(31) [(32)] Processing--The extraction of materials, transfer or volume reduction, conversion to energy, or other separation and preparation of waste for reuse or disposal, and includes the treatment or neutralization of hazardous waste so as to render such waste nonhazardous, safer for transport, or amenable to recovery, storage, or volume reduction. The meaning of transfer as used here, does not include the conveyance or transport off-site of solid waste by truck, ship, pipeline, or other means.

(32) [(33)] Publicly owned [Publicly-owned] treatment works (POTW)--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the state or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(33) [(34)] Radioactive material--A naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously.

(34) [(35)] Recommencing discharger--A source which recommences discharge after terminating operations.

(35) [(36)] Regional administrator--Except when used in conjunction with the words "state director," or when referring to EPA approval of a state program, where there is a reference in the EPA regulations adopted by reference in this chapter to the "regional administrator" or to the "director," the reference is more properly made, for purposes of state law, to the executive director of the Texas Commission on Environmental Quality, or to the Texas Commission on Environmental Quality, consistent with the organization of the agency as set forth in Texas Water Code, Chapter 5, Subchapter B. When used in conjunction with the words "state director" in such regulations, regional administrator means the regional administrator for the Region VI office of the EPA or his or her authorized representative. A copy of 40 Code of Federal Regulations Part 122, is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(36) [(37)] Remediation waste--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code (TWC), §7.031 (relating to Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under TWC [Texas Water Code], §7.031; §335.166(5) of this title (relating to Corrective Action Program); or §335.167(c) of this title.

(37) [(38)] Schedule of compliance--A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with CWA and regulations.

(38) [(39)] Severe property damage--Substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge. Severe property damage does not mean economic loss caused by delays in production.

(39) [(40)] Sewage sludge--The solids, residues, and precipitate separated from or created in sewage or municipal waste by the unit processes of a treatment works.

(40) [(41)] Site--The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(41) [(42)] Solid waste permit--A permit issued under Texas Health and Safety Code, Chapter 361 [Texas Civil Statutes, Article 4477-7], as amended.

(42) [(43)] Storage--The holding of waste for a temporary period, at the end of which the waste is processed, recycled, disposed of, or stored elsewhere.

(43) [(44)] Texas pollutant discharge elimination system (TPDES)--The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, [402,] 318, 402, and 405; Texas Water Code; and Texas Administrative Code regulations.

(44) [(45)] Toxic pollutant--Any pollutant listed as toxic under CWA, §307(a) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing CWA, §405(d).

(45) [(46)] Treatment works treating domestic sewage--A publicly owned [publicly-owned] treatment works or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of sewage or municipal waste, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

(46) [(47)] Variance--Any mechanism or provision under CWA, §301 or §316, or under Chapter 308 of this title (relating to Criteria and Standards for the National Pollutant Discharge Elimination System) which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA or this title.

(47) [(48)] Wastewater discharge permit--A permit issued under Texas Water Code, Chapter 26.

(48) [(49)] Wetlands--Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and constitute water in the state.

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) 239-0348

SUBCHAPTER C. APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

30 TAC §§305.45, 305.49, 305.50

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

These proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§305.45. Contents of Application for Permit.

(a) Forms for permit applications will be made available by the executive director. Each application for permit must [shall] include the following:

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

(7) a listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management Program [program] under the Texas Solid Waste Disposal Act;

(B) (No change.)

(C) National Pollutant Discharge Elimination System (NPDES) Program under the CWA [Federal Clean Water Act (CWA)] and Waste Discharge Program under the Texas Water Code, Chapter 26;

(D) Prevention of Significant Deterioration (PSD) Program under the FCAA [Federal Clean Air Act];

(E) Nonattainment Program under the FCAA [Federal Clean Air Act];

(F) national emission standards for hazardous pollutants (NESHAPS) preconstruction approval under the FCAA [Clean Air Act];

(G) (No change.)

(H) dredge or fill permits under [of] the FCAA [Federal Clean Water Act];

(I) licenses under the TRCA [Texas Radiation Control Act]; and

(J) other environmental permits; and

(8) a [Supplementary technical report. A] supplementary technical report [shall be] submitted in connection with an application. The report shall be prepared either by a Texas licensed [registered] professional engineer, a licensed professional geoscientist, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made. The report must [shall] include the following:

(A) - (B) (No change.)

(C) such other information as reasonably may be required by the executive director for an adequate understanding of the project or operation, and which is necessary to provide the commission an adequate opportunity to make the considerations required by §331.121 of this title (relating to Class I Wells), §331.122 of this title (relating to Class III Wells), §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order), §305.48 of this title (relating to Additional Contents for [of] Applications for Waste Discharge Permits), §305.54 of this title (relating to Additional Requirements for Radioactive Material License), §336.207 of this title (relating to General Requirements for [the] Issuance of a License), §336.513 of this title (relating to Technical Requirements for Active Disposal Sites), §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites), §336.705 of this title (relating to Content of Application [Applications]), and Chapter 330, Subchapter E of this title (relating to [Municipal Solid Waste] Permit Procedures).

(b) (No change.)

§305.49. Additional Contents of Application for an Injection Well Permit.

(a) The following must [shall] be included in an application for an injection well permit:

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

(3) the manner in which compliance with the financial assurance requirements in [~~of~~] Chapter 37 of this title (relating to Financial Assurance) will be attained;

(4) the manner in which compliance with the plugging and abandonment requirements of §331.46 of this title (relating to Closure [~~Plugging and Abandonment~~] Standards) will be attained;

(5) - (8) (No change.)

(9) a complete delineation by a licensed professional geoscientist or a licensed professional engineer of any aquifer or portion of an aquifer for which exempt status is sought; and

(10) (No change.)

(b) (No change.)

(c) An application under this section shall comply with the requirements of §305.50(a)(4)(B) of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order).

§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order.

(a) Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste must [~~shall~~] meet the following requirements.

(1) (No change.)

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing, or disposal facility. The information provided must [~~shall~~] be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health, and solid waste statutes. Also to be submitted are listings of sites owned, operated, or controlled by the applicant in the State of Texas. For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the TSWDA [~~Texas Solid Waste Disposal Act~~] and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included, including, but not limited to, the information set forth in the TSWDA [~~Texas Solid Waste Disposal Act~~], §4(e)(13).

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste is [~~shall be~~] subject to the following requirements, as applicable.

(A) - (B) (No change.)

(C) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of subparagraph (B) of this paragraph, submission of the following information will be an adequate demonstration:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must [~~shall~~] also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure [~~post closure~~], corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities);

(ii) - (iii) (No change.)

(D) For all applicants not meeting the requirements of subparagraph (C) of this paragraph, financial information submitted to satisfy the requirements of subparagraph (B) of this paragraph must [~~shall~~] include the applicable items listed under clauses (i) - (vii) of this subparagraph. Financial statements required under clauses (ii) and (iii) of this subparagraph shall be prepared in accordance with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statements, and accountant's opinion letter:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must [~~shall~~] also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure [~~post closure~~], corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title;

(ii) - (vii) (No change.)

(E) (No change.)

(F) An application for a modification or amendment of a permit that [~~which~~] includes a capacity expansion of an existing hazardous waste management facility must [~~shall~~] also contain information provided by a licensed professional geoscientist or licensed professional engineer delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the EPA, that:

(i) - (ii) (No change.)

(G) (No change.)

(5) (No change.)

(6) An application for a new hazardous waste landfill, land treatment facility, or surface impoundment that [~~which~~] is filed after January 1, 1986, and that [~~which~~] is to be located in the apparent recharge zone of a regional aquifer must include a hydrogeologic report prepared by a licensed professional geoscientist or licensed professional engineer documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

(7) - (9) (No change.)

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application must [~~shall~~] also contain the following:

(A) copies of any relevant land use plans, adopted in accordance with the Texas Local Government Code, Chapter 211 [~~(Vernon's Supplement 1991)~~], which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed;

(B) - (D) (No change.)

(E) the information and demonstrations concerning faults described under paragraph (4)(F) of this subsection [~~section~~].

(11) - (14) (No change.)

(b) An application specifically for a post-closure permit or for a post-closure order for post-closure care must [~~shall~~] meet the following requirements, as applicable.

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

(3) An application for a post-closure order or for a post-closure permit must [~~shall~~] also contain any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the TSWDA [~~Texas Solid Waste Disposal Act~~] and Chapter 335 of this title including, but not limited to, the information set forth in TSWDA [~~the Texas Solid Waste Disposal Act~~], §361.109.

(4) - (5) (No change.)

(6) All engineering and geoscientific information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer or licensed professional geoscientist, and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act and the Texas Geoscience Practice Act and the licensing and registration boards under these acts. [~~Engineering plans and specifications submitted as part of an application for a post-closure order or for a post-closure permit shall be prepared and sealed by a registered professional engineer who is currently registered, as required by the Texas Engineering Practices Act.~~]

(7) (No change.)

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

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CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (commission) proposes amendments to §§330.2, 330.3, 330.14, 330.51, 330.53, 330.56, 330.64, 330.230, 330.231, 330.235, 330.238, 330.242, 330.303 - 330.305, 330.415, and 330.416.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 405, 77th Legislature, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The Texas Geoscience Practice Act (the Act) requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The primary purpose of the proposed amendments is to establish regulations for the public practice of geoscience in conformance with the Act by requiring a person who prepares and submits geoscientific information to the commission to be a licensed professional geoscientist. According to the bill analysis prepared at the time of passage, the ultimate purpose of the Act was public safety through the public registration of the practice of geoscience. In addition to the aforementioned amendments, the proposal includes reference corrections, removal of obsolete language, and other changes needed to comply with Texas Register requirements.

SECTION BY SECTION DISCUSSION

Throughout these sections, the commission has revised the words "shall" and "must," when needed, to reflect guidance provided in the Legislative Council's Drafting Manual. Administrative changes are also proposed in accordance with Texas Register requirements and to be consistent with other commission rules.

Proposed §330.2, Definitions, amends the introductory paragraph by deleting the word "shall" and the phrase "unless the context clearly indicates otherwise." The definition of licensed professional geoscientist is proposed to be added as new paragraph (67). The definition of qualified groundwater scientist in existing paragraph (110) is proposed to be renumbered as paragraph (107) and revised to replace "scientist or engineer" with "licensed geoscientist or licensed engineer." The definition of special waste in existing paragraph (141) is proposed to be renumbered as paragraph (137) and revised to update citations. The definitions of commission, EPA, executive director, person, RCRA, and SWDA are proposed to be deleted because they are defined in 30 TAC §3.2, concerning Definitions and TWC and TACB are proposed to be deleted because they are no longer used. The definitions of shall and should are proposed to be deleted because the Legislative Council's Drafting Manual discusses the use of shall and certain other words for the purpose of drafting regulatory requirements or prohibitions or authorizing certain powers. The subsequent paragraphs are proposed to be renumbered accordingly.

The commission proposes several revisions to §330.3, Applicability, including the addition of acronyms (e.g., "MSW" in subsections (a) and (h) and "MSWLFs" in subsection (b)), and correction of references in subsections (c) and (e) - (g). In subsection (f), a change is proposed to indicate that a professional engineer must be licensed to practice in Texas, rather than being registered to practice.

Proposed §330.14, Arid Exemption Process, amends paragraphs (8) and (9) by eliminating the phrase "where appropriate" because the sealing of work done for the public by licensed professional geoscientists or engineers will always be appropriate. The term "groundwater scientist" is substituted for "groundwater professional" in paragraph (9). Proposed §330.14 also includes several administrative formatting corrections (e.g., correcting the name of the agency from "Texas Water Commission" to "Texas Commission on Environmental Quality").

Proposed §330.51(d), Permit Application for Municipal Solid Waste Facilities, makes the legal citation to the Act and to the Engineering Practice Act. In subsection (d)(1), the commission proposes to state the responsibilities of the responsible engineer more concisely and to correct the section number and title of the citation in the Texas Administrative Code governing the use of engineers' seals. The commission proposes new subsection (d)(2) requiring the responsible licensed professional geoscientist to seal, sign, and date applicable items as required by

the Act and in accordance with any rules subsequently adopted by the Texas Board of Professional Geoscientists concerning geoscientists' seals. Existing subsection (d)(2) is proposed to be renumbered as subsection (d)(3).

The commission proposes to amend §330.53(b)(11)(A) to simplify the double preposition. In addition, the commission proposes several administrative revisions, including correction of the statutory citation to the Texas Health and Safety Code (THSC), addition of acronyms, addition of introductory clauses for grammatical clarity, and correction of rule references to 30 TAC Chapter 301, concerning Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements.

The commission proposes revisions to §330.56, Attachments to the Site Development Plan, which involve correcting typographical errors and acronyms, rearranging wording and rewording to provide a more accurate description (e.g., replacing "after-level" with "after-equilibrium" in subsection (d)(5)(C)(i)), and correcting rule references (e.g., changing the reference from §330.200 to §330.241 in subsection (e)(6) - (8) and other rule reference corrections in subsection (k)).

Proposed §330.64, Additional Standard Permit Conditions for Municipal Solid Waste Facilities, requires that all revised drawings prepared by a licensed professional engineer or a licensed professional geoscientist shall be signed and sealed in accordance with the Act. The commission proposes a streamlining measure by deleting existing §330.64(a), because the permit or permit amendment is based on earlier submissions, and the post-permit issuance or post-permit amendment issuance versions of the site development plan are considered to be unnecessary. The remaining subsections are proposed to be relettered to account for this deletion. Other proposed revisions to §330.64 are the addition of acronyms and the term "executive director" to replace outdated references and streamlining the rule language in §330.64(b) to refer to the application requirements of §330.51(e) instead of repeating those requirements in relettered subsection (b). The commission also proposes adding requirements for geoscientific plans and reports to relettered subsection (b), with similar signing and sealing requirements for geoscientists as are currently required for engineers.

Proposed §330.230, Applicability, corrects rule references and deletes obsolete language. In subsection (a), the commission proposes to add the statement, "Owners and operators of MSWLF units shall comply with the groundwater monitoring requirements of this subchapter." This statement retains the requirement to comply with groundwater monitoring requirements which had been specified in subsections (c) and (d) that are proposed to be deleted.

Proposed §330.231(e), Groundwater Monitoring Systems, substitutes "must" for "shall" as discussed previously in this preamble and deletes unneeded language in references.

Proposed §330.235, Assessment Monitoring Program, makes acronym additions and nonsubstantive corrections to rule language and references.

Proposed §330.238, Implementation of the Corrective Action Program, corrects rule references and makes nonsubstantive changes to rule language.

Proposed §330.242(a), Monitor-Well Construction Specifications, removes an unnecessary hyphen between "solid" and "waste." Other nonsubstantive changes to rule language are proposed. In subsection (a)(1)(A) and (D), the term "licensed professional geoscientist" is substituted for "qualified geologist." The commission proposes a rule reference correction in subsection (g) relating to plugging and abandonment of monitoring wells.

Proposed §330.303(b), Fault Areas, replaces the demonstrative adjective "such" with specific references to studies or conditions of differential subsidence or faulting; replaces "geologist" with "licensed professional geoscientist"; and adds "licensed" before "professional engineer." Other proposed revisions to §330.303(b) are minor editorial revisions.

Proposed §330.304, Seismic Impact Zones, and proposed §330.305, Unstable Areas, substitute "must" for "shall" as discussed previously in this preamble.

Proposed §330.415(c), Additional Requirements for Municipal Solid Waste Mining Facilities, replaces the phrase "a Registered Professional Engineer" with "the licensed professional engineer"; replaces an indefinite article with the definite article; and requires that all revised geological drawings be signed and sealed by the licensed professional geoscientist responsible for their preparation and included in the loose-leaf binder.

Proposed §330.416(f), Registration Application Preparation, corrects the use of the demonstrative pronoun by substituting "that" for "which" to introduce the restrictive clause describing the soil boring plan; and changes a future tense to present tense. The phrases "soil boring plan" and "site development plan" are lowercased throughout the section. In proposed subsections (a) and (m)(1), the term "registered" is replaced by "licensed" before "professional engineer." Proposed subsection (m) recognizes the agency accepted use of "groundwater" as a single word; inserts four necessary commas; lowercases the phrase "unified soil classification"; replaces the demonstrative pronoun introducing a restrictive clause by a conjunction; replaces a comma with a semicolon; and substitutes the word "licensed" for "registered" before "professional engineer."

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rules. The proposed rules add a requirement for certain individuals to be licensed by the Texas Board of Professional Geoscientists as required by SB 405.

Ms. Conrad also determined that, for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the agency. The proposed rules might impact other state agencies or local governments with staff geologists who need to become licensed under these rules. The fees associated with obtaining the professional geoscientist license are $200 to cover the application and first-year license and $150 per year after the first year. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has 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 is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined 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, 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 establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules are intended to establish procedures to require that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists, and to make other corrections to the rules. Therefore, it is not anticipated that the proposed rules will 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 commission concludes that these proposed rules do not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, 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.

In this case, the proposed amendments to Chapter 330 do not meet any of these requirements. First, there are no applicable federal standards that these rules would address. Second, the proposed rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these proposed rules. Fourth, the commission proposes these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

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

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act and to make other corrections to the rules. The proposed rules would substantially advance this stated purpose by requiring that geoscientific reports submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property because the rules do not affect real property. These rules require that specific portions of applications or necessary data submitted to the commission be produced, signed, sealed, and dated by a qualified professional individual who has demonstrated his or her qualifications by obtaining a license to engage in the public practice of geoscience from the Texas Board of Professional Geoscientists. In addition, the proposed amendments make minor corrections to the rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the proposed rule changes do not modify or alter standards set forth in existing rules, and do not govern or authorize any actions subject to the CMP. The proposed rulemaking would require a person who prepares and submits geoscientific information to the agency to be a licensed professional geoscientist. The commission invites public comment on the consistency determination of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., June 30, 2003, and should reference Rule Log Number 2001-051E-330-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §§330.2, 330.3, 330.14

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.024, which authorizes the commission to establish standards of operation for the management and control of solid waste; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105; THSC, §361.024; and Texas Civil Statutes, Article 3271b, the Act.

§330.2. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the feminine gender also include the masculine and neuter genders; words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this chapter, [~~shall~~] have the following meanings[~~, unless the context clearly indicates otherwise~~].

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

(7) Areas susceptible to mass movements--Areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the municipal solid waste landfill [~~MSWLF~~] unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

(8) Asbestos-containing materials--Include the following:[~~.~~]

(A) Category I nonfriable asbestos-containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using the method specified in Appendix A, Subpart F, 40 Code of Federal Regulations (CFR) [~~CFR~~], Part 763, §1, Polarized Light Microscopy (40 CFR Part 763, §1).

(B) Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1.0% asbestos as determined using the methods specified in 40 CFR Part 763, §1, [~~Appendix A, Subpart F, 40 CFR, Part 763, §1, Polarized Light Microscopy,~~] that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

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

(9) - (22) (No change.)

[~~(23) Commission--The Texas Water Commission and its successors.~~]

(23) [~~(24)~~] Compacted waste--Waste that has been reduced in volume by a collection vehicle or other means including, but not limited to, dewatering, composting, incineration, and similar processes, with the exception of waste that has been reduced in volume by a small, in-house compactor device owned and/or operated by the generator of the waste.

(24) [~~(25)~~] Composite liner--A liner system consisting of two components: the upper component must consist of a minimum 30-mil flexible membrane liner (FML) or minimum 60-mil high-density polyethylene [~~(HDPE),~~] and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1 x 10^{-7} cm/sec. The FML component must be installed in direct and uniform contact with the compacted soil component.

(25) [~~(26)~~] Compost--The stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(26) [~~(27)~~] Composting--The controlled biological decomposition of organic materials through microbial activity.

(27) [~~(28)~~] Conditionally exempt small-quantity generator--A person who generates no more than 220 pounds of hazardous waste in a calendar month.

(28) [~~(29)~~] Construction-demolition waste--Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

(29) [~~(30)~~] Contaminate--The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of ground or surface water.

(30) [~~(31)~~] Controlled burning--The combustion of solid waste with control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products, i.e., incineration in an incinerator.

(31) [~~(32)~~] Discard--To abandon a material and not use, reuse [~~re-use~~], reclaim, or recycle it. A material is abandoned by being disposed of; burned or incinerated (except where the material is being burned as a fuel for the purpose of recovering usable energy); or physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed.

(32) [~~(33)~~] Discharge--Includes deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or omissions.

(33) [~~(34)~~] Discharge of dredged material--Any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified disposal site located in waters of the United States and the runoff or overflow from a contained land or water disposal area.

(34) [~~(35)~~] Discharge of fill material--The addition of fill material into waters of the United States. The term generally includes placement of fill necessary to the construction of any structure in waters of the United States: the building of any structure or improvement requiring rock, sand, dirt, or other inert material for its construction; the building of dams, dikes, levees, and riprap.

(35) [~~(36)~~] Discharge of pollutant--Any addition of any pollutant to navigable waters from any point source or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source.

(36) [(37)] Displacement--The measured or estimated distance between two formerly adjacent points situated on opposite walls of a fault (synonymous with net slip).

(37) [(38)] Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(38) [(39)] Dredged material--Material that is excavated or dredged from waters of the United States.

(39) [(40)] Drinking-water intake--The point at which water is withdrawn from any water well, spring, or surface water body for use as drinking water for humans, including standby public water supplies.

(40) [(41)] Elements of nature--Rainfall, snow, sleet, hail, wind, sunlight, or other natural phenomenon.

(41) [(42)] Endangered or threatened species--Any species listed as such under [pursuant to the] Federal Endangered Species Act, §4, 16 United States Code [(USC)], §1536, as amended or under [pursuant to] the Texas Endangered Species Act.

[(43) EPA--United States Environmental Protection Agency.]

(42) [(44)] Essentially insoluble--Any material that, if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of the maximum contaminant levels in 40 Code of Federal Regulations (CFR) Part 141 [CFR 141], Subparts B and G, and 40 CFR Part 143 for total dissolved solids.

[(45) Executive director--The executive director of the Texas Water Commission and successors, or a person authorized to act on her behalf.]

(43) [(46)] Existing municipal solid waste landfill [MSWLF] unit--Any municipal solid waste landfill unit that received solid waste as of October 9, 1993. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

(44) [(47)] Experimental project--Any new proposed method of managing municipal solid waste, including resource and energy recovery projects, that appears to have sufficient merit to warrant commission approval.

(45) [(48)] Facility--All contiguous land and structures, other appurtenances, and improvements on the land used for the storage, processing, or disposal of solid waste.

(46) [(49)] Fault--A fracture or a zone of fractures in any material along which strata, rocks, or soils on one side have been displaced with respect to those on the other side.

(47) [(50)] Fill material--Any material used for the primary purpose of filling an excavation.

(48) [(51)] Floodplain--The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(49) [(52)] Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(50) [(53)] Gas condensate--The liquid generated as a result of any gas recovery process at a municipal solid waste facility.

(51) [(54)] Generator--Any person, by site or location, whose act or process produces a solid waste or first causes it to become regulated.

(52) [(55)] Groundwater--Water below the land surface in a zone of saturation.

(53) [(56)] Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the EPA under [United States Environmental Protection Agency (EPA) pursuant to] the federal Solid Waste Disposal Act, as amended by RCRA [the Resource Conservation and Recovery Act of 1976], 42 United States Code, §§6901 [USC, §6901] *et seq.*, as amended.

(54) [(57)] Holocene--The most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

(55) [(58)] Household waste--Any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels, and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas); does not include yard waste or brush that is completely free of any household wastes.

(56) [(59)] Industrial hazardous waste--Hazardous waste determined to be of industrial origin.

(57) [(60)] Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class I industrial solid waste or Class I waste is any industrial solid waste designated as Class I by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 of this title (relating to Definitions) and §335.505 of this title (relating to Class 1 [I] Waste Determination).

(B) Class II industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class I or Class III, as defined in §335.506 of this title (relating to Class 2 [II] Waste Determination).

(C) Class III industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 [III] Waste Determination).

(58) [(61)] Inert material--A naturally occurring nonputrescible material that is essentially insoluble such as soil, dirt, clay, sand, gravel, and rock.

(59) [(62)] In situ--In natural or original position.

(60) [(63)] Karst terrain--An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in

karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(61) [(64)] Lateral expansion--A horizontal expansion of the waste boundaries of an existing municipal solid waste landfill [MSWLF] unit.

(62) [(65)] Land application of solid waste--The disposal or use of solid waste (including, but not limited to, sludge or septic tank pumpings or mixture of shredded waste and sludge) in which the solid waste is applied within three feet of the surface of the land.

(63) [(66)] Leachate--A liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

(64) [(67)] Lead--The metal element, atomic number 82, atomic weight 207.2, with the chemical symbol Pb.

(65) [(68)] Lead acid battery--A secondary or storage battery that uses lead as the electrode and dilute sulfuric acid as the electrolyte and is used to generate electrical current.

(66) [(69)] License--

(A) A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(67) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(68) [(70)] Liquid waste--Any waste material that is determined to contain "free liquids" as defined by EPA Method 9095 (Paint Filter Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

(69) [(71)] Litter--Rubbish and putrescible waste.

(70) [(72)] Lower explosive limit--The lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

(71) [(73)] Man-made inert material--Those non-putrescible, essentially insoluble materials fabricated by man that are not included under the definition of rubbish.

(72) [(74)] Medical waste--Waste generated by health-care-related facilities and associated with health-care activities, not including garbage or rubbish generated from offices, kitchens, or other non-health-care activities. The term includes special waste from health care-related facilities which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions [(Definition, Treatment, and Disposition of Special Waste from Health-Care Related Facilities)]. The term does not include medical waste produced on farmland and ranchland as defined in Agriculture Code, §252.001(6) (Definitions--Farmland or ranchland), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants.

(73) [(75)] Monofill--A landfill or landfill trench into which only one type of waste is placed.

(74) [(76)] MSWLF--Municipal solid waste landfill facility.

(75) [(77)] Municipal hazardous waste--Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator of the EPA [, United States Environmental Protection Agency].

(76) [(78)] Municipal solid waste [(MSW)]--Solid waste resulting from, or incidental to, municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(77) [(79)] Municipal solid waste facility [(MSW facility)]--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(78) [(80)] Municipal solid waste landfill unit [(MSWLF unit)]--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2 [§257.2 of 40 CFR, Part 257]. A municipal solid waste landfill (MSWLF) [An MSWLF] unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(79) [(81)] Municipal solid waste site [(MSW site)]--A plot of ground designated or used for the processing, storage, or disposal of solid waste.

(80) [(82)] Navigable waters--The waters of the United States, including the territorial seas.

(81) [(83)] New municipal solid waste landfill [MSWLF] unit--Any municipal solid waste landfill unit that has not received waste prior to October 9, 1993.

(82) [(84)] Nonpoint source--Any origin from which pollutants emanate in an unconfined and unchanneled manner, including, but not limited to, surface runoff and leachate seeps.

(83) [(85)] Non-RACM--Non-regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61 [CFR 61]. This is asbestos material in a form such that potential health risks resulting from exposure to it are minimal.

(84) [(86)] Nuisance--Municipal solid waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare.

(85) [(87)] Open burning--The combustion of solid waste without:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

(86) [~~(88)~~] Operate--To conduct, work, run, manage, or control.

(87) [~~(89)~~] Operating record--All plans, submittals, and correspondence for a municipal solid waste landfill [~~an MSWLF~~] facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

(88) [~~(90)~~] Operation--A municipal solid waste site or facility is considered to be in operation from the date that solid waste is first received or deposited at the municipal solid waste site or facility until the date that the site or facility is properly closed in accordance with this chapter.

(89) [~~(91)~~] Operator--The person(s) responsible for operating the facility or part of a facility.

(90) [~~(92)~~] Opposed case--A case when one or more parties appear, or make their appearance, in opposition to an application and are designated as opponent parties by the hearing examiner either at or before the public hearing on the application.

(91) [~~(93)~~] Other regulated medical waste--Medical waste that is not included within special waste from health care-related facilities but that is subject to special handling requirements within the generating facility by other state or federal agencies, excluding medical waste subject to 25 TAC Chapter 289 (concerning Radiation Control).

(92) [~~(94)~~] Owner--The person who owns a facility or part of a facility.

(93) [~~(95)~~] PCB--Polychlorinated biphenyl molecule.

(94) [~~(96)~~] Polychlorinated biphenyl [~~PCB~~] waste(s)--Those polychlorinated biphenyls (PCBs) [~~PCBs~~] and PCB items that are subject to the disposal requirements of 40 Code of Federal Regulations (CFR) Part 761 [~~CFR 761~~]. Substances that are regulated by 40 CFR Part 761 include, but are not limited to: PCB articles, PCB article containers, PCB containers, PCB-contaminated electrical equipment, PCB equipment, PCB transformers, recycled PCBs, capacitors, microwave ovens, electronic equipment, and light ballasts and fixtures.

(95) [~~(97)~~] Permit--A written permit issued by the commission that, by its conditions, may authorize the owner or operator to construct, install, modify, or operate a specified municipal solid waste storage, processing, or disposal facility in accordance with specific limitations.

[~~(98) Person--An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.~~]

(96) [~~(99)~~] Point of compliance--A vertical surface located no more than 500 feet from the hydraulically downgradient limit of the waste management unit boundary, extending down through the uppermost aquifer underlying the regulated units, and located on land owned by the owner of the permitted facility.

(97) [~~(100)~~] Point source--Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants are or may be discharged.

(98) [~~(101)~~] Pollutant--Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

(99) [~~(102)~~] Pollution--The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

(100) [~~(103)~~] Poor foundation conditions--Areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a municipal solid waste landfill [~~an MSWLF~~] unit.

(101) [~~(104)~~] Population equivalent--The hypothetical population that would generate an amount of solid waste equivalent to that actually being managed based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals. It is assumed, for the purpose of these sections, that the average volume per ton of waste entering a municipal solid waste disposal facility is three cubic yards. For the purposes of these sections, the following population equivalents shall apply:

(A) 8,000 persons--20 tons per day or 60 cubic yards per day;

(B) 5,000 persons--12 1/2 tons or 37 1/2 cubic yards per day;

(C) 1,500 persons--3 3/4 tons or 11 1/4 cubic yards per day;

(D) 1,000 persons--225 pounds of wastewater treatment plant sludge per day (dry-weight basis).

(102) [~~(105)~~] Post-consumer waste--A material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purposes of this subchapter, the term does not include industrial or hazardous waste.

(103) [~~(106)~~] Premises--A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

(104) [~~(107)~~] Processing--Activities including, but not limited to, the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize such waste, or to recover energy or material from the waste, or to render such waste nonhazardous or less hazardous; safer to transport, store, dispose of, or make it amenable for recovery, amenable for storage, or reduced in volume. Unless the executive director determines that regulation of such activity under these rules is necessary to protect human health or the environment, the definition of "processing" does not include activities relating to those materials exempted by the administrator of the EPA under [~~Environmental Protection Agency pursuant to~~] the federal Solid Waste Disposal Act, as amended by RCRA [~~the Resource Conservation and Recovery Act~~], 42 United States Code, §§6901 [~~USC, §6901~~] *et seq.*, as amended.

(105) [~~(108)~~] Public highway--The entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

(106) [~~(109)~~] Putrescible waste--Organic wastes, such as garbage, wastewater treatment plant sludge, and grease trap waste, that is capable of being decomposed by microorganisms with sufficient rapidity as to cause odors or gases or is capable of providing food for or attracting birds, animals, and disease vectors.

(107) [~~(110)~~] Qualified groundwater scientist--A licensed geoscientist [~~scientist~~] or licensed engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable the individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(108) [~~(111)~~] RACM--Regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61 [~~CFR 61~~], as amended, includes: friable asbestos material, Category I nonfriable asbestos-containing material (ACM) [~~ACM~~] that has become friable; Category I nonfriable ACM that will be, or has been, subjected to sanding, grinding, cutting, or abrading; or Category II nonfriable ACM that has a high probability of becoming, or has become, crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

(109) [~~(112)~~] Radioactive waste--Waste that requires specific licensing under Texas Health and Safety Code, [~~25 TAC~~] Chapter 401, [~~concerning Radioactive Materials and Other Sources of Radiation, Health and Safety Code~~] and the rules adopted by the commission under that law.

[~~(113) RCRA--Resource Conservation and Recovery Act.~~]

(110) [~~(114)~~] Recyclable material--A material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(111) [~~(115)~~] Recycling--A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use.

(112) [~~(116)~~] Refuse--Same as rubbish.

(113) [~~(117)~~] Registration--The act of filing information for specific solid waste management activities that do not require a permit, as determined by this chapter.

(114) [~~(118)~~] Regulated hazardous waste--A solid waste that is a hazardous waste as defined in 40 Code of Federal Regulations (CFR) §261.3 [~~CFR, Part 261.3~~], and that is not excluded from regulation as a hazardous waste under 40 CFR §261.4(b) [~~CFR, Part 261.4(b)~~], or that was not generated by a conditionally exempt small-quantity generator.

(115) [~~(119)~~] Relevant point of compliance--See point of compliance.

(116) [~~(120)~~] Resource recovery--The recovery of material or energy from solid waste.

(117) [~~(121)~~] Resource recovery site--A solid waste processing site at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(118) [~~(122)~~] Rubbish--Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(119) [~~(123)~~] Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(120) [~~(124)~~] Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(121) [~~(125)~~] Salvaging--The controlled removal of waste materials for utilization, recycling, or sale.

(122) [~~(126)~~] Saturated zone--That part of the earth's crust in which all voids are filled with water.

(123) [~~(127)~~] Scavenging--The uncontrolled and unauthorized removal of materials at any point in the solid waste management system.

(124) [~~(128)~~] Scrap tire--Any tire that can no longer be used for its original intended purpose.

(125) [~~(129)~~] Seasonal high water table--The highest measured or calculated water level in an aquifer during investigations for a permit application and/or any groundwater characterization studies at a site.

(126) [~~(130)~~] Septage--The liquid and solid material pumped from a septic tank, cesspool, or similar sewage treatment system.

[~~(131) Shall--The stated action is mandatory.~~]

[~~(132) Should--The stated action is recommended as a guide in completing the overall requirement.~~]

(127) [~~(133)~~] Site--Same as facility.

(128) [~~(134)~~] Site development plan--A document, prepared by the design engineer, that provides a detailed design with supporting calculations and data for the development and operation of a solid waste site.

(129) [~~(135)~~] Site operating plan--A document, prepared by the design engineer in collaboration with the site operator, that provides guidance to site management and operating personnel in sufficient detail to enable them to conduct day-to-day operations throughout the life of the site in a manner consistent with the engineer's design and the commission's regulations.

(130) [~~(136)~~] Site operator--The holder of, or the applicant for, a permit (or license) for a municipal solid waste site.

(131) [~~(137)~~] Sludge--Any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water-supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(132) [~~(138)~~] Small municipal solid waste landfill [~~MSWLF~~]--A municipal solid waste landfill at which less than 20 tons of municipal solid waste are disposed of daily based on an annual average.

(133) [~~(139)~~] Solid waste--Garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material,

including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code [~~the Water Code~~], Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under [~~the~~] Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the EPA [~~United States Environmental Protection Agency~~] under the federal Solid Waste Disposal Act, as amended by RCRA [~~Resource Conservation and Recovery Act~~], as amended (42 United States Code, §§6901 [~~USC, §6901~~] *et seq*.).

(134) [~~(140)~~] Source-separated recyclable material--Recyclable material from residential, commercial, municipal, institutional, recreational, industrial, and other community activities, that at the point of generation has been separated, collected, and transported separately from municipal solid waste, or transported in the same vehicle as municipal solid waste, but in separate containers or compartments. Source-separation does not require the recovery or separation of non-recyclable components that are integral to a recyclable product, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) source-separated recyclable material rendered unmarketable by damage during collection, unloading, and sorting, such as broken recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles;

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings; and

(iv) pallets and packaging materials.

(135) [~~(141)~~] Special waste--Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

(A) hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under §§335.401 - 335.403 and §§335.405 - 335.412 [~~§§335.401 - 335.412~~] of this title (relating to Household Materials Which Could Be Classified as Hazardous Wastes [~~Waste~~]);

(B) Class I industrial nonhazardous waste not routinely collected with municipal solid waste;

(C) special waste from health-care-related facilities (refers to certain items of medical waste);

(D) municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;

(E) septic tank pumpings;

(F) grease and grit trap wastes;

(G) wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers, used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) [~~CFR~~], Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);

(H) slaughterhouse wastes;

(I) dead animals;

(J) drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;

(K) pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;

(L) discarded materials containing asbestos;

(M) incinerator ash;

(N) soil contaminated by petroleum products, crude oils, or chemicals;

(O) used oil;

(P) light ballasts and/or small capacitors containing polychlorinated biphenyl [~~(PCB)~~] compounds;

(Q) waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility permitted under this chapter;

(R) waste generated outside the boundaries of Texas that contains:

(i) any industrial waste;

(ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or

(iii) any item listed as a special waste in this paragraph;

(S) any waste stream other than household or commercial garbage, refuse, or rubbish;

(T) lead acid storage batteries; and

(U) used-oil filters from internal combustion engines.

(136) [~~(142)~~] Special waste from health care-related facilities--Includes animal waste, bulk human blood, blood products, body fluids, microbiological waste, pathological waste, and sharps as defined in 25 TAC §1.132 (concerning Definitions).

(137) [~~(143)~~] Stabilized sludges--Those sludges processed to significantly reduce pathogens, by processes specified in 40 Code of Federal Regulations [~~CFR~~], Part 257, Appendix II.

(138) [~~(144)~~] Storage--The holding of solid waste for a temporary period, at the end of which the solid waste is processed, disposed of, or stored elsewhere. Facilities established as a neighborhood collection point for only nonputrescible source-separated recyclable material, as a collection point for consolidation of parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic city-wide [~~citywide~~] cleanup campaigns and cleanup of rights-of-way or roadside parks, or for accumulation of used or scrap tires prior to transportation to a processing or disposal site are considered examples of storage facilities. Storage includes operation of pre-collection and post-collection as follows:

(A) pre-collection-that storage by the generator, normally on his premises, prior to initial collection;

(B) post-collection-that storage by a transporter or processor, at a processing site, while the waste is awaiting processing or transfer to another storage, disposal, or recovery facility.

(139) [~~(145)~~] Storage battery--A secondary battery, so called because the conversion from chemical to electrical energy is reversible and the battery is thus rechargeable. Secondary or storage batteries contain an electrode made of sponge lead and lead dioxide, nickel-iron, nickel-cadmium, silver-zinc, or silver-cadmium. The electrolyte used is sulfuric acid. Other types of storage batteries contain lithium, sodium-liquid sulfur, or chlorine-zinc using titanium electrodes.

(140) [~~(146)~~] Store--To keep, hold, accumulate, or aggregate.

(141) [~~(147)~~] Structural components--Liners, leachate collections systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the municipal solid waste landfill [~~MSWLF~~] that is necessary for protection of human health and the environment.

(142) [~~(148)~~] Surface impoundment--A facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with human-made materials) that is designed to hold an accumulation of liquids; examples include holding, storage, settling, and aeration pits, ponds, or lagoons.

(143) [~~(149)~~] Surface water--Surface water as included in water in the state.

[~~(150) SWDA--Texas Solid Waste Disposal Act.~~]

[~~(151) TACB--Texas Air Control Board and its successors.~~]

(144) [~~(152)~~] Texas Civil Statutes--Vernon's Texas Revised Civil Statutes Annotated.

(145) [~~(153)~~] Transfer station--A fixed facility used for transferring solid waste from collection vehicles to long-haul vehicles (one transportation unit to another transportation unit). It is not a storage facility such as one where individual residents can dispose of their wastes in bulk storage containers that are serviced by collection vehicles.

(146) [~~(154)~~] Transportation unit--A truck, trailer, open-top box, enclosed container, rail car, piggy-back trailer, ship, barge, or other transportation vehicle used to contain solid waste being transported from one geographical area to another.

(147) [~~(155)~~] Transporter--A person who collects and transports solid waste; does not include a person transporting his or her household waste.

(148) [~~(156)~~] Trash--Same as Rubbish.

(149) [~~(157)~~] Treatment--Same as Processing.

(150) [~~(158)~~] Triple rinse--To rinse a container three times using a volume of solvent capable of removing the contents equal to 10% of the volume of the container or liner for each rinse.

[~~(159) TWC--Texas Water Commission.~~]

(151) [~~(160)~~] Uncompacted waste--Any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted prior to collection by any type of mechanical device other than small, in-house compactor devices owned and/or operated by the generator of the waste.

(152) [~~(161)~~] Unified soil classification system--The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(153) [~~(162)~~] Unconfined water--Water that is not controlled or impeded in its direction or velocity.

(154) [~~(163)~~] Unit--Municipal solid waste landfill unit.

(155) [~~(164)~~] Unstable area--A location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(156) [~~(165)~~] Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer; includes lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(157) [~~(166)~~] Vector--An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

(158) [~~(167)~~] Washout--The carrying away of solid waste by waters.

(159) [~~(168)~~] Waste management unit boundary--A vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

(160) [~~(169)~~] Waste-separation/intermediate-processing center--A facility, sometimes referred to as a materials recovery facility, to which recyclable materials arrive as source-separated materials, or where recyclable materials are separated from the municipal waste stream and processed for transport off-site for reuse, recycling, or other beneficial use.

(161) [~~(170)~~] Waste-separation/recycling facility--A facility, sometimes referred to as a material recovery facility, in which recyclable materials are removed from the waste stream for transport off-site for reuse, recycling, or other beneficial use.

(162) [~~(171)~~] Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(163) [~~(172)~~] Water table--The upper surface of the zone of saturation at which water pressure is equal to atmospheric pressure, except where that surface is formed by a confining unit.

(164) [(173)] Waters of the United States--All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide, with their tributaries and adjacent wetlands, interstate waters and their tributaries, including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; that are used or could be used for industrial purposes by industries in interstate commerce; and all impoundments of waters otherwise considered as navigable waters; including tributaries of and wetlands adjacent to waters identified herein.

(165) [(174)] Wetlands--As defined in Chapter 307 of this title (relating to Texas Surface Water Quality Standards) and areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas.

(166) [(175)] Yard waste--Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

§330.3. Applicability.

(a) The provisions of this chapter apply to any person as defined in §330.2 of this title (relating to Definitions) involved in any aspect of the management and control of municipal solid waste (MSW) including, but not limited to, storage, collection, handling, transportation, processing, and disposal. Furthermore, these regulations apply to any person who by contract, agreement, or otherwise, arrange to process, store, or dispose of, or arranged with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, or by any other person or entity.

(b) For municipal solid waste landfills (MSWLFs) that stopped receiving waste before October 9, 1991, and MSW sites [Sites], only the provisions of §330.251 of this title (relating to Closure Requirements for MSWLF Units That Stop Receiving Waste Prior to October 9, 1991, and MSW Sites) apply. If not previously submitted, owners or operators shall submit a closure report that documents that MSWLF [municipal solid waste landfill facility (MSWLF)] units or MSW site(s), or portions thereof, have received final cover.

(c) MSWLF units that receive waste after October 9, 1991, but stop receiving waste before October 9, 1993, are exempt from the requirements of this chapter except for the final cover requirements specified in §330.252 of this title (relating to Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1991, but Stop Receiving Waste Prior to October 9, 1993). The final cover must be installed and certified in accordance with the requirements contained in §§330.250 - 330.253 of this title (relating to Closure and Post-Closure). Owners or operators of MSWLF units described in this subsection that fail to complete cover installation and certification within the time limits specified in §§330.250 - 330.256 of this title [(relating to Closure and Post-Closure)] will be subject to all the requirements of these regulations.

(d) (No change.)

(e) Owners or operators of new, existing, and lateral expansions of small MSWLF units that dispose of less than 20 tons of MSW [municipal solid waste] daily in the small MSWLF unit based on an annual average are exempt from §§330.200 - 330.206 of this title (relating to Groundwater Protection Design and Operation) and §§330.230, 330.231, and 330.233 - 330.242 of this title (relating to Groundwater Monitoring and Corrective Action) [§§330.230 - 330.242 of this title (relating to Ground-Water Protection Design and Operation and Groundwater Monitoring and Corrective Action respectively)], so long as there is no evidence of existing groundwater contamination from the small MSWLF unit, the small MSWLF unit serves a community that has no practicable waste management alternative, and the small MSWLF unit is located in an area that receives less than or equal to 25 inches of annual average precipitation. Requests for exemptions under subsection (f) of this section may be approved administratively by the executive director, upon demonstration of compliance with these criteria. An exemption request may be denied by the executive director if he determines that granting the exemption could result in a substantial threat of groundwater contamination, based upon information made available to him from the applicant or agency files. Owners or operators may appeal such denials to the commission for decision.

(f) Owners or operators of new, existing, and lateral expansions of small MSWLF units that meet the criteria in subsection (e) of this section must submit a certification of eligibility to the executive director and place a copy of the certification in the operating record. The certification shall [must] be signed by a principal executive officer, a ranking elected official, or an independent professional engineer licensed [registered] to practice in the State of Texas, except that the groundwater certification must [shall] be submitted in accordance with §330.14 of this title (relating to Arid Exemption Process) and signed by a qualified groundwater scientist, as defined in this chapter. The certification must [shall] contain the following information:

(1) a certification that the MSWLF unit meets all requirements contained in subsection (e) of this section for exemptions from §§330.200 - 330.206, 330.230, 330.231, and 330.233 - 330.242 of this title [and §§330.230 - 330.242 of this title (relating to Groundwater Protection Design and Operation and Groundwater Monitoring and Corrective Action respectively)];

(2) a report[,] prepared by a qualified groundwater scientist in accordance with §330.14 of this title [(relating to Arid Exemption Process)] documenting that there is no evidence of groundwater contamination;

(3) - (5) (No change.)

(g) If the owner or operator of a new, existing, or lateral expansion of a small MSWLF unit who has previously asserted eligibility in subsections (e) and (f) of this section has knowledge or becomes aware of groundwater contamination from the small MSWLF unit within a one-mile radius of the small MSWLF unit, or the unit no longer meets the definition of a small MSWLF, or the waste reduction program is ineffective (based upon an evaluation of trends established after a minimum period of a year), or a practicable alternative becomes available, the owner or operator shall notify in writing the executive director of such condition(s) and thereafter comply with §§330.200 - 330.206,330.230, 330.231, and 330.233 - 330.242 of this title [and §§330.230 - 330.242 of this title (relating to Groundwater Protection Design and Operation and Groundwater Monitoring and Corrective Action, respectively)] on a schedule specified by the executive director. The executive director may consider the economic investment made by the owner or operator in establishing the schedule for compliance. The minimum time allowed for compliance necessitated by loss of small MSWLF status or availability of a practicable alternative shall be 18 months.

(h) Owners or operators of MSW [~~municipal solid waste~~] facilities are required to comply with the financial assurance requirements specified in Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) and Chapter 330, Subchapter K of this title (relating to Closure, Post-Closure, and Corrective Action).

(i) (No change.)

§330.14. Arid Exemption Process.

The following process must [~~shall~~] be used for meeting the provisions for groundwater certification of the arid exemption, as described in §330.3(f) of this title (relating to Applicability).

(1) (No change.)

(2) Visit the site and locate by physical inspection water wells and springs in the site area. Determine the locations and plot them on the topographic map.

(A) (No change.)

(B) Determine from appropriate records (for example, water-well drillers, pump installers, city records, underground water conservation district, Texas Water Development Board, Texas Commission on Environmental Quality [~~Texas Water Commission~~], United States Geological Survey, etc.) which of the wells are completed in the shallowest aquifer. If no wells are completed in the shallowest aquifer or if the shallowest aquifer is more than 150 feet below the land surface at the site, refer to paragraph (7) of this section. Otherwise, refer to paragraph (3) of this section.

(3) - (7) (No change.)

(8) The report shall be signed and[~~, where appropriate,~~] sealed by the qualified groundwater scientist who reviewed the data and reached the conclusions.

(9) If there is no evidence of groundwater contamination by the landfill, the qualified groundwater scientist [~~professional~~] who reviewed the data and reached the conclusions shall sign and[~~, where appropriate,~~] seal a statement in the following format: I (we) have reviewed the groundwater data described in a report submitted with this certification and have found no evidence that the ___________ Municipal Solid Waste Landfill (MSWLF) unit located at ___________ has contaminated groundwater in the uppermost aquifer.

(10) (No change.)

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

Filed with the Office of the Secretary of State on May 16, 2003.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 29, 2003
For further information, please call: (512) 239-0348

SUBCHAPTER E. PERMIT PROCEDURES

30 TAC §§330.51, 330.53, 330.56, 330.64

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.024, which authorizes the commission to establish standards of operation for the management and control of solid waste; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105; THSC, §361.024; and Texas Civil Statutes, Article 3271b, the Act.

§330.51. Permit Application for Municipal Solid Waste Facilities.

(a) (No change.)

(b) Required information. The information required by this subchapter defines the basic elements for an application.

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

(4) For construction in a floodplain, the following must [~~shall~~] be submitted, where applicable:

(A) approval from the governmental entity with jurisdiction under [~~the~~] Texas Water Code, §16.236, as implemented by Chapter 301 of this title (relating to Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements);

(B) - (D) (No change.)

(5) The applicant shall submit demonstration of compliance with National Pollution Discharge Elimination System (NPDES) under CWA [~~the Clean Water Act~~], §402, as amended.

(6) The applicant shall submit documentation of coordination with the following agencies, where applicable:

(A) Texas Commission on Environmental Quality [~~Texas Water Commission~~] for compliance with CWA [~~the Clean Water Act~~], §208;

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

(7) - (10) (No change.)

(c) (No change.)

(d) Preparation. Preparation of the application must [~~shall~~] conform with Texas Civil Statutes, Texas Engineering Practice Act, Article 3271a and Texas Geoscience Practice Act, Article 3271b [~~Engineering Practice Act~~].

(1) The responsible engineer shall seal, sign, and date [~~affix her seal, sign her name, place the date of execution and state intended purpose on~~] each sheet of engineering plans, drawings, and [~~on~~] the title or contents page of the application as required by [~~the~~] Texas Engineering Practice Act, §15c, and in accordance with 22 TAC §131.166 (relating to Engineers' Seals) [~~§131.138 (relating to Engineer's Seal)~~].

(2) The responsible geoscientist shall seal, sign, and date applicable items as required by Texas Geoscience Practice Act, §6.13(b).

(3) [~~(2)~~] Applications that have not been sealed shall be considered incomplete for the intended purpose and shall be returned to the applicant.

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

§330.53. Technical Requirements of Part II of the Application.

(a) General.

(1) Part II of the application must [~~shall~~] describe the existing conditions and character of the site and surrounding area. Parts I and II of the application must [~~shall~~] provide information relating to land-use compatibility under the provisions of Texas Health and Safety Code [~~the Health and Safety Code~~], §361.069.

(2) (No change.)

(b) Requirements of Part II.

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

(8) Land use. A primary concern is that the use of any land for an MSW [~~a municipal solid waste~~] site not adversely impact human health or the environment. The impact of the site upon a city, community, group of property owners, or individuals must [~~shall~~] be considered in terms of compatibility of land use, zoning in the vicinity, community growth patterns, and other factors associated with the public interest. To assist the executive director in evaluating the impact of the site on the surrounding area, the applicant shall provide the following:

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

(9) (No change.)

(10) General geology and soils statement. The reports prepared under this paragraph must meet the following requirements:

(A) discuss [~~Discuss~~] in general terms the geology and soils of the proposed site; [~~.~~]

(B) identify [~~Identify~~] and provide data on fault areas located within the proposed site in accordance with §330.303 of this title (relating to Fault Areas); [~~.~~]

(C) identify [~~Identify~~] and provide data on seismic impact zones in accordance with §330.304 of this title (relating to Seismic Impact Zones); and [~~.~~]

(D) identify [~~Identify~~] and provide data on unstable areas in accordance with §330.305 of this title (relating to Unstable Areas).

(11) Ground and surface water [~~surface-water~~] statement. The report prepared under this paragraph must provide:

(A) [~~Provide~~] data about [~~as to~~] the site-specific groundwater conditions at and near the site; and [~~.~~]

(B) [~~Provide~~] data on surface water at and near the site.

(12) Floodplains and wetlands statement. The floodplains and wetlands statement must:

(A) provide [~~Provide~~] data on floodplains in accordance with Chapter 301, Subchapter C [~~§§301.31 - 301.46~~] of this title (relating to Approval of Levees and Other Improvements); and [~~.~~]

(B) discuss [~~Discuss~~] wetlands in accordance with §330.302 of this title (relating to Wetlands). For the purpose of this rule, demonstration can be made by providing evidence that the facility has a Corps of Engineers permit for the use of any wetlands area.

(13) (No change.)

§330.56. Attachments to the Site Development Plan.

(a) (No change.)

(b) Attachment 2--fill cross-section.

(1) The fill cross-sections must [~~shall~~] consist of plan profiles across the site clearly showing the top of the levee, top of the proposed fill (top of the final cover), maximum elevation of proposed fill, [~~top of the final cover,~~] top of the wastes, existing ground, bottom of the excavations, side slopes of trenches and fill areas, gas vents or wells, and groundwater monitoring wells, plus the initial and static levels of any water encountered.

(2) - (4) (No change.)

(c) (No change.)

(d) Attachment 4--geology report. This portion of the application applies to owners or operators of municipal solid waste (MSW) facilities that store, process, or dispose of MSW [~~municipal waste~~] in landfills. If the municipal solid waste landfill (MSWLF) facility [~~(MSWLF)~~] contains two or more MSWLF units, the information requested pertaining to regional geology and regional aquifers need only be provided once. The geology report shall be prepared and signed by a qualified groundwater scientist except that the reports required under paragraph (5) of this subsection shall be signed and sealed, where appropriate, as required by the Texas Engineering Practice Act. Previously prepared documents may be submitted but must [~~shall~~] be supplemented as necessary to provide the requested information. Sources and references for information must [~~shall~~] be provided. The geology report must [~~shall~~] contain the information in paragraphs (1) - (6) of this subsection.

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

(5) The owner or operator shall provide the results of investigations of subsurface conditions at a particular waste management unit in the following reports.

(A) Subsurface investigation report. This report must [~~shall~~] describe all borings drilled on-site to test soils and characterize groundwater and must [~~shall~~] include a site map drawn to scale showing the surveyed locations and elevations of the borings. Boring logs must [~~shall~~] include a detailed description of materials encountered including any discontinuities such as fractures, fissures, slickensides, lenses, or seams. Geophysical logs of the boreholes may be useful in evaluating the stratigraphy. Each boring must [~~shall~~] be presented in the form of a log that contains, at a minimum, the boring number; surface elevation and location coordinates; and a columnar section with text showing the elevation of all contacts between soil and rock layers, description of each layer using the unified soil classification, color, degree of compaction, and moisture content. A key explaining the symbols used on the boring logs and the classification terminology for soil type, consistency, and structure must [~~shall~~] be provided.

(i) - (vii) (No change.)

(viii) Cross-sections must be prepared from the borings depicting the generalized strata at the facility. For small waste management units two perpendicular cross-sections will normally suffice.

(ix) A narrative [~~text~~] that describes the investigator's interpretations of the subsurface stratigraphy based upon the field investigation shall be provided.

(B) (No change.)

(C) A groundwater investigation report. This report must [~~shall~~] include the following:

(i) the depth at which groundwater was encountered and records of after-equilibrium [~~after-level~~] measurements in all borings. The cross-sections prepared in response to subparagraph (A)(viii) of this paragraph must [~~shall~~] be annotated to note the level at which groundwater was first encountered and the level of groundwater after equilibrium is reached or just prior to plugging, whichever is later. This water-level information must [~~shall~~] also be presented on all borings required by this paragraph and presented in a table format in the report;

(ii) - (iii) (No change.)

(iv) an analysis of the most likely pathway(s) for pollutant migration in the event that the primary barrier liner system is penetrated. This must [~~shall~~] include any groundwater modeling data and results as described in §330.231(e)(2) of this title [~~(relating to Groundwater Monitoring Systems)~~] and must [~~shall~~] consider changes in groundwater flow that are expected to result from construction of the facility.

(6) The owner or operator shall provide a description of the existing or proposed monitoring system that meets the requirements of §330.231 of this title [~~(relating to Groundwater Monitoring Systems)~~]. The owner or operator shall also provide engineering drawings of a typical monitoring well and a table of data for all proposed wells that includes the following information for each well: total depth of the well; depth to groundwater; surveyed elevation of the ground surface at the well; surveyed elevation of the top of each well casing (or that point consistently used to determine depth to groundwater); depth to the top and base of the screen; and depth to the top and base of the filter pack.

(e) Attachment 5--groundwater characterization report. A groundwater characterization study and report is required from owners and operators of proposed MSWLF units or proposed lateral expansions except for Soils and Liner Evaluation Reports [~~SLERs~~] and Flexible Membrane Liner Evaluation Reports [~~FMLERs~~] covering previously permitted and approved designs. The report must [~~shall~~] contain the following information:

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

(3) on a topographic map as required under §330.52(b)(4)(C) of this title (relating to Technical Requirements of Part I of the Application), a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under §330.200(d) of this title (relating to Design Criteria), the proposed location of groundwater monitoring wells as required under §330.231 of this title [~~(relating to Groundwater Monitoring Systems)~~], and, to the extent possible, the information required in paragraph (2) of this subsection;

(4) a description of any plume of contamination that has entered the groundwater from the MSWLF facility at the time that the application was submitted that:

(A) delineates the extent of the plume on the topographic map required under §330.52(b)(4)(C) of this title [~~(relating to Technical Requirements of Part I of the Application)~~]; and

(B) (No change.)

(5) detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of §330.231 of this title [~~(relating to Groundwater Monitoring Systems)~~];

(6) if the hazardous constituents listed in Table I of §330.241 of this title (relating to Constituents for Detection Monitoring) [~~§330.200 of this title (relating to Design Criteria)~~] have not been detected in the groundwater at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a detection monitoring program that meets the requirements of §330.234 of this title (relating to Detection Monitoring Program). This submission must [~~shall~~] address the following items specified under §330.234 of this title [~~(relating to Detection Monitoring Program)~~]:

(A) (No change.)

(B) background values for each monitoring parameter or constituent listed in §330.241 of this title [~~(relating to Constituents for Detection Monitoring)~~], or procedures to calculate such values; and

(C) (No change.)

(7) if the presence of hazardous constituents listed in Table I of §330.241 of this title [~~§330.200 of this title (relating to Design Criteria)~~] has been detected in the groundwater at the time of the permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish an assessment monitoring program that meets the requirements of §330.235 of this title [~~(relating to Assessment Monitoring Program)~~]. To demonstrate compliance with §330.235 of this title, the owner or operator shall address the following items:

(A) (No change.)

(B) a characterization of the contaminated groundwater, including concentration of assessment constituents as defined in §330.235 of this title [~~(relating to Assessment Monitoring Program)~~];

(C) a list of assessment constituents as defined in §330.235 of this title [~~(relating to Assessment Monitoring Program)~~] for which assessment monitoring will be undertaken in accordance with §330.233 of this title (relating to Groundwater Sampling and Analysis Requirements) and §330.235 of this title;

(D) detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of §330.233 of this title [~~(relating to Groundwater Sampling and Analysis Requirements)~~]; and

(E) (No change.)

(8) if hazardous constituents have been measured in the groundwater that exceed the concentration limits established in Table 1 of §330.241 of this title [~~§330.200 of this title (relating to Design Criteria)~~], the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program that meets the requirements of §330.236 of this title (relating to Assessment of Corrective Measures) and §330.237 of this title (relating to Selection of Remedy). To demonstrate compliance with §330.236 of this title [~~(relating to Assessment of Corrective Measures)~~], the owner or operator shall address, at a minimum, the following items:

(A) a characterization of the contaminated groundwater [~~ground water~~], including concentrations of assessment constituents as defined in §330.235 of this title [~~(relating to Assessment Monitoring Program)~~];

(B) - (E) (No change.)

(f) Attachment 6--groundwater [~~Groundwater~~] and surface water protection plan and drainage plan. These plans must [~~shall~~] reflect locations, details, and typical sections of levees, dikes, drainage channels, culverts, holding ponds, trench liners, storm sewers, leachate collection systems, or any other facilities relating to the protection of groundwater and surface water. Adequacy of provisions for safe passage of any internal or externally adjacent floodwaters should be reflected here.

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

(4) As part of the attachment, the following information and analyses must [~~shall~~] be submitted for review, as applicable.

(A) Drainage and run-off control analyses:

(i) - (iv) (No change.)

(v) structural designs of the collection, drainage, and/or storage facilities, and results of all field tests to ensure compatibility with soils; [~~and~~]

(vi) - (vii) (No change.)

(B) (No change.)

(g) - (i) (No change.)

(j) Attachment 10--soil and liner quality control plan [~~(SLQCP)~~]. The soil and liner quality control plan must [~~SLQCP shall~~] be prepared in accordance with §§330.200 - 330.206 of this title (relating to Groundwater Protection Design and Operation).

(k) Attachment 11--groundwater sampling and analysis plan [~~(GWSAP)~~]. The groundwater sampling and analysis plan must [~~GWSAP shall~~] be prepared in accordance with §§330.230, 330.231, and 330.233 - 330.242 of this title (relating to Groundwater Monitoring and Corrective Action) or §330.239 of this title (relating to Groundwater Monitoring at Type IV Landfills) [~~§§330.230 - 330.242 of this title (relating to Groundwater Monitoring and Corrective Action)~~].

(l) - (o) (No change.)

§330.64. Additional Standard Permit Conditions for Municipal Solid Waste Facilities.

[~~(a) Within 30 days after the commission approval of a permit or permit amendment, the owner or operator shall submit three copies of the final approved site development plan. These copies shall be loose-leaf bound and shall include all drawings and sketches. The outside binder shall be marked "Approved Site Development Plan" and shall indicate the date of commission approval. The executive director may allow an extension of the deadline if work required cannot reasonably be completed within 30 days.~~]

(a) [~~(b)~~] If at any time during the life of the site the site owner or operator becomes aware of any condition in the approved site development plan that necessitates a change to accommodate new technology or improved methods or that makes it impractical to keep the site in compliance, the site owner or operator shall submit to the executive director a revised plan. Such proposed changes to the approved site development plan must [~~shall~~] be made in accordance with §305.62 of this title (relating to Amendment) and/or §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications [~~Modification~~]) and must be approved prior to their implementation.

(b) [~~(c)~~] All drawings or other sheets prepared for revisions to a site development plan or other previously approved documents, that may be required by this subchapter, must [~~shall~~] be submitted in triplicate following the format in §330.51(e) of this title (relating to Permit Application for Municipal Solid Waste Facilities). The revised pages must [~~shall~~] be marked for the current revision (i.e., "Revision Number 3"), dated, and punched for insertion into the loose-leaf binder. [~~Drawings shall be 8 1/2 by 11 inches or 11 by 17 inches. However, standard-sized drawings (24 by 36 inches) folded to 8 1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret.~~] All revised engineering and geoscientific plans, drawings, and reports shall be signed and sealed by a licensed professional engineer or geoscientist as specified in §330.51(d) of this title. [~~registered professional engineer responsible for their preparation and shall be included in the loose-leaf binder. Bound plans and/or reports shall be signed and sealed by the engineer, preferably of the first page.~~]

(c) [~~(d)~~] [~~Preconstruction conference.~~] Prior to the beginning of initial excavation or construction for a municipal solid waste (MSW) facility or a lateral expansion, a preconstruction conference shall be held. All aspects of the permit, construction activities, and inspections shall be discussed. An initial preconstruction conference shall be held within 90 days after the issuance of a permit. Additional preconstruction conferences may be held prior to the opening of a new MSW [~~municipal solid waste~~] landfill unit. The executive director [~~TWC and successors' representatives~~] and owner's representatives, including the engineer, the geotechnical consultant, the contractor, and the site manager, shall attend the preconstruction conference.

(d) [~~(e)~~] [~~Pre-opening inspection.~~] After all initial construction activity has been completed and prior to accepting any solid waste, the owner/operator shall contact the executive director [~~TWC and successors' representatives~~] and request a pre-opening inspection. A pre-opening inspection shall be conducted by the executive director [~~TWC and successors' representatives~~] within 14 days of notification by the owner or operator that all construction activities have been completed, accompanied by representatives of the owner/operator and the engineer.

(e) [~~(f)~~] [~~Pre-operation authorization.~~] The MSW [~~municipal solid waste~~] facility shall not accept solid waste until the executive director has confirmed in writing that all applicable submissions required by the permit, the approved site development plan, and this chapter have been received and found to be acceptable, and that construction is in compliance with the permit and the approved site development plan. If the executive director has not provided a written or verbal response within 14 days of completion of the pre-opening inspection, the facility shall be considered approved for placement of waste.

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

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For further information, please call: (512) 239-0348

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SUBCHAPTER I. GROUNDWATER MONITORING AND CORRECTIVE ACTION

30 TAC §§330.230, 330.231, 330.235, 330.238, 330.242

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.024, which authorizes the commission to establish standards of operation for the management and control of solid waste; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105; THSC, §361.024; and Texas Civil Statutes, Article 3271b, the Act.

§330.230. Applicability.

(a) The requirements in this subchapter apply to all municipal solid waste landfill [~~landfills~~] (MSWLF) units, except as provided in

§330.3(e) of this title (relating to Applicability), in §330.239 of this title (relating to Groundwater Monitoring at Type IV Landfills), in §330.240 of this title (relating to Groundwater Monitoring at Other Types of Landfills and Facilities), and in subsection (b) of this section. Owners and operators of MSWLF units shall comply with the groundwater monitoring requirements of this subchapter.

(b) Groundwater monitoring requirements under §330.231 and §§330.233 - 330.235 [~~§§330.231 - 330.235~~] of this title (relating to Groundwater Monitoring and Corrective Action) may be suspended by the executive director for an MSWLF unit if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that MSWLF unit to the uppermost aquifer as defined in §330.2 of this title (relating to Definitions) during the active life and the closure and post-closure care period of the unit. This demonstration shall be certified by a qualified groundwater scientist and approved by the executive director, and must [~~shall~~] be based upon:

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

[~~(c) Owners and operators of MSWLF units shall comply with the groundwater monitoring requirements of this subchapter according to the following schedule unless an alternative schedule is specified under subsection (d) of this section. Not later than the applicable effective date, the owner or operator shall submit a certification that the system is in compliance with §330.231 of this title (relating to Groundwater Monitoring Systems). The certification shall be submitted not later than the applicable effective date, unless a later date is approved by the executive director in writing.~~]

[~~(1) Owners or operators of existing MSWLF units that have groundwater monitoring systems in place prior to the effective date of these regulations shall continue the monitoring programs in accordance with regulations in effect prior to October 9, 1993, and the applicable permit provisions until the earliest of the effective dates of paragraphs (2), (3), or (4) of this subsection, §330.230(d) of this title (relating to Applicability), or the effective date of the Groundwater Sampling and Analysis Plan described in §330.233 of this title (relating to Groundwater Sampling and Analysis Requirements).~~]

[~~(2) Owners or operators of existing MSWLF units and lateral expansions less than one mile from a drinking-water intake as defined in §330.2 of this title (relating to Definitions) shall submit to the executive director a documented certification signed by a qualified groundwater scientist that the facility is in compliance with the groundwater monitoring requirements specified in §§330.231 - 330.235 of this title (relating to Groundwater Monitoring and Corrective Action) by October 9, 1994.~~]

[~~(3) Owners or operators of existing MSWLF units and lateral expansions more than one mile but less than two miles from a drinking-water intake shall submit to the executive director a documented certification signed by a qualified groundwater scientist that the facility is in compliance with the groundwater monitoring requirements specified in §§330.231 - 330.235 of this title (relating to Groundwater Monitoring and Corrective Action) by October 9, 1995.~~]

[~~(4) Owners or operators of existing MSWLF units and lateral expansions more than two miles from a drinking-water intake shall submit to the executive director a documented certification signed by a qualified groundwater scientist that the facility is in compliance with the groundwater monitoring requirements specified in §§330.231 - 330.235 of this title (relating to Groundwater Monitoring and Corrective Action) by October 9, 1996.~~]

(c) [~~(5)~~] Owners or operators of new MSWLF units must [~~shall~~] submit to the executive director a documented certification signed by a qualified groundwater scientist that the facility is in compliance with the groundwater monitoring requirements specified in [§]§330.231 and §§330.233 - 330.235 of this title [~~(relating to Groundwater Monitoring and Corrective Action)~~] before waste can be placed in the unit.

[~~(d) The executive director may specify an alternative schedule for the owners or operators of existing MSWLF units and lateral expansions to comply with groundwater monitoring requirements specified in §§330.231-330.235 of this title (relating to Groundwater Monitoring and Corrective Action). This schedule will ensure that 50 percent of all existing MSWLF units are in compliance by October 9, 1994, and that all existing MSWLF units are in compliance by October 9, 1996. The following factors must be considered in determining any potential risks to human health and the environment posed by a MSWLF unit proposed for an alternative compliance schedule:~~]

[~~(1) proximity of human and environmental receptors;~~]

[~~(2) design of the MSWLF unit;~~]

[~~(3) age of the MSWLF unit;~~]

[~~(4) size of the MSWLF unit;~~]

[~~(5) types and quantities of wastes disposed including sewage sludge; and~~]

[~~(6) resource value of the underlying aquifer including current and future uses, proximity and withdrawal rate of users, and groundwater quality and quantity.~~]

(d) [~~(e)~~] Once established at an MSWLF unit, groundwater monitoring must [~~shall~~] be conducted throughout the active life and post-closure care period of that MSWLF unit as specified in §330.254 of this title (relating to Post-Closure Care Maintenance Requirements).

§330.231. Groundwater Monitoring Systems.

(a) A groundwater monitoring system must [~~shall~~] be installed that consists of a sufficient number of monitoring wells, installed at appropriate locations and depths, to yield representative groundwater samples from the uppermost aquifer as defined in §330.2 of this title (relating to Definitions).

(1) (No change.)

(2) The downgradient monitoring system must [~~shall~~] include monitoring wells installed to allow determination of the quality of groundwater passing the relevant point of compliance as defined in §330.2 of this title [~~(relating to Definitions)~~]. The downgradient monitoring system must [~~shall~~] be installed to ensure the detection of groundwater contamination in the uppermost aquifer. When physical obstacles preclude installation of the groundwater monitoring wells at existing units, the wells may be installed at the closest practicable distance hydraulically downgradient from the relevant point of compliance as defined in §330.2 of this title [~~(relating to Definitions)~~] that will ensure detection of groundwater contamination of the uppermost aquifer.

(b) - (d) (No change.)

(e) A groundwater monitoring system, including the number, spacing, and depths of monitoring wells or other sampling points, shall be designed and certified by a qualified groundwater scientist. Within 14 days of the certification, the owner or operator shall [~~must~~] submit the certification to the executive director and place a copy of the certification in the operating record. The plan for the monitoring system and all supporting data must [~~shall~~] be submitted to the executive director for review and approval prior to construction.

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

§330.235. Assessment Monitoring Program.

(a) Assessment monitoring is required whenever a statistically significant change from background has been detected for one or more of the constituents listed in §330.241 of this title (relating to Constituents for Detection Monitoring), or in the alternative list established in accordance with [~~pursuant to~~] §330.234(a)(2) of this title (relating to Detection Monitoring Program), and this constitutes triggering.

(b) Within 90 days of triggering an assessment monitoring program in accordance with §330.234(d) of this title [~~(relating Detection Monitoring Program)~~], and not less than annually thereafter, the owner or operator shall sample and analyze the groundwater monitoring system for all constituents identified in paragraph (1) of this subsection.

(1) The constituents to be analyzed in samples collected in accordance with [~~pursuant to~~] subsection (b) of this section shall be those listed in Appendix II to 40 Code of Federal Regulations (CFR) [~~Regulation~~] Part 258 and those in the alternative list established in accordance with [~~pursuant to~~] §330.234(a)(2) of this title [~~(relating to Detection Monitoring Program)~~]. All of these constituents are hereinafter referred as "assessment constituents." Appendix II to 40 CFR [~~Code of Federal Regulation~~] Part 258, effective October 9, 1993, is herein adopted by reference.

(2) (No change.)

(c) (No change.)

(d) Not later than 45 days after each sampling event, the owner or operator shall submit to the executive director the results from the initial and subsequent sampling events required in subsection (b) of this section and also place them in the operating record. The owner or operator shall also:

(1) within 90 days of submittal of the results from a sampling event and on at least a semiannual basis thereafter, resample all wells specified by §330.231(a) of this title (relating to Groundwater Monitoring Systems) and conduct analyses for all constituents in §330.241 of this title [~~(relating to Constituents for Detection Monitoring)~~] or in the alternative list established in accordance with [~~pursuant to~~] §330.234(a)(2) of this title [~~(relating to Detection Monitoring Program)~~] and for those constituents in Appendix II of 40 CFR Part 258 that are detected in response to subsection (b) of this section. The results must [~~shall~~] be submitted to the executive director not later than 45 days after the sampling event and shall also be placed in the operating record. At least one sample must [~~shall~~] be collected and analyzed from each background and downgradient well at each sampling event. The executive director may specify an alternative monitoring frequency during the active life and the closure and post-closure care period for the constituents referred to in this paragraph. The alternative frequency for constituents in §330.241 of this title [~~(relating to Constituents for Detection Monitoring)~~], or the alternative list established in accordance with [~~pursuant to~~] §330.234(a)(2) of this title [~~(relating to Detection Monitoring Program)~~], during the active life and the closure and post-closure care period shall be not less than annual. The alternative frequency shall be based on consideration of the factors described in subsection (c) of this section;

(2) establish background concentrations for any constituents detected in accordance with [~~pursuant to~~] subsection (b) of this section or paragraph (1) of this subsection;

(3) establish groundwater protection standards for all constituents in downgradient wells detected in accordance with [~~pursuant to~~] subsection (b) of this section or paragraph (1) of this subsection. The groundwater protection standards shall be established in accordance with subsection (h) or (i) of this section.

(e) (No change.)

(f) If the concentrations of any assessment constituents are above background values, but all concentrations are below the groundwater protection standard established under subsection (h) or (i) of this section, using the statistical procedures in §330.233(g) of this title [~~(relating to Groundwater Sampling and Analysis Requirements)~~], the owner or operator shall continue assessment monitoring in accordance with this section.

(g) If one or more assessment constituents are detected at statistically significant levels above the groundwater protection standard established under subsection (h) or (i) of this section in any sampling event, the owner or operator shall notify the executive director and appropriate local government officials in writing and place a notice in the operating record within 60 days of the sampling event identifying the assessment constituents that have exceeded the groundwater protection standard.

(1) (No change.)

(2) The owner or operator may demonstrate that a source other than an MSWLF unit caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration must [~~shall~~] be prepared and certified by a qualified groundwater scientist and submitted to the executive director for review and approval, and must [~~shall~~] be placed in the operating record. If a successful demonstration is made, the owner or operator shall continue monitoring in accordance with the assessment monitoring program required by [~~pursuant to~~] this section and may return to detection monitoring if the assessment constituents are at or below background as specified in subsection (e) of this section. Until a successful demonstration is made, the owner or operator shall comply with paragraph (1) of this subsection including initiating an assessment of corrective measures.

(h) The owner or operator shall establish a groundwater protection standard for each assessment constituent detected in the downgradient [~~down-gradient~~] monitoring wells. The groundwater protection standard must [~~shall~~] be:

(1) for constituents for which a maximum contaminant level (MCL) has been promulgated under 40 CFR Part 141, Safe Drinking Water Act (codified), §1412 [~~§1412 of the Safe Drinking Water Act (codified) under 40 Code of Federal Regulation Part 141~~], the MCL for that constituent;

(2) for constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with §330.231(a)(1) of this title [~~(relating to Groundwater Monitoring Systems)~~]; or

(3) (No change.)

(i) The executive director may establish an alternative groundwater protection standard for assessment constituents for which MCLs have not been established. These groundwater protection standards shall be appropriate health-based levels that satisfy the following criteria:

(1) the level is derived in a manner consistent with EPA [~~Environmental Protection Agency~~] guidelines for assessing the health risks of environmental pollutants (51 FR [~~FedReg~~] 33992, 34006, 34014, 34028, September 24, 1986);

(2) the level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 (CFR) [~~Code of Federal Regulation~~] Part 792) or equivalent;

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

(j) (No change.)

§330.238. Implementation of the Corrective Action Program.

(a) Based on the schedule established under §330.237(d) of this title (relating to Selection of Remedy) for initiation and completion of remedial activities, the owner or operator shall:

(1) establish and implement a corrective action groundwater monitoring program that:

(A) - (B) (No change.)

(C) demonstrates compliance with groundwater protection standards under [~~pursuant to~~] subsection (e) of this section;

(2) implement the corrective action remedy selected under §330.237 of this title [~~(relating to Selection of Remedy)~~]; and

(3) take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required under [~~pursuant to~~] §330.237 of this title [~~(relating to Selection of Remedy)~~]. The following factors shall be considered by an owner or operator in determining if interim measures are necessary:

(A) - (G) (No change.)

(b) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of §330.237(b) of this title [~~(relating to Selection of Remedy)~~] are not being achieved through the remedy selected. In such cases, the owner or operator shall, with approval of the executive director, implement other methods or techniques that could practicably achieve compliance with the requirements unless the owner or operator makes the determination under subsection (c) of this section and if it is approved by the executive director. Failure to obtain approval from the executive director for the other methods and techniques does not relieve the owner or operator of the burden to implement an acceptable remedy.

(c) If the owner or operator determines that compliance with requirements under §330.237(b) of this title [~~(relating to Selection of Remedy)~~] cannot be practically achieved with any currently available methods, the owner or operator shall:

(1) present to the executive director certification by a qualified groundwater scientist that compliance with requirements under §330.237(b) of this title [~~(relating to Selection of Remedy)~~] cannot be practically achieved with any currently available methods;

(2) - (4) (No change.)

(d) All solid wastes that are managed in accordance with [~~pursuant to~~] a remedy required under §330.237 of this title [~~(relating to Selection of Remedy)~~], or an interim measure required under subsection (a)(3) of this section, shall be managed in a manner that is protective of human health and the environment and that complies with applicable RCRA requirements.

(e) Remedies selected under [~~pursuant to~~] §330.237 of this title [~~(relating to Selection of Remedy)~~] shall be considered complete when:

(1) the owner or operator complies with the groundwater protection standards established under §330.235(h) or (i) of this title [~~(relating to Assessment Monitoring Program)~~] at all points within the plume of contamination that lies within or beyond the groundwater monitoring system established under §330.231(a) of this title (relating to Groundwater Monitoring Systems);

(2) compliance with the groundwater protection standards established under §330.235(h) or (i) of this title [~~(relating to Assessment Monitoring Program)~~] has been achieved by demonstrating that concentrations of assessment constituents have not exceeded the groundwater protection standards for a period of three consecutive years, using the statistical procedures and performance standards in §330.233(g) and (h) of this title (relating to Groundwater Sampling and Analysis Requirements). The executive director may specify an alternative length of time during which the owner or operator shall demonstrate that concentrations of assessment constituents have not exceeded the groundwater protection standards. The alternative length of time shall be based on:

(A) - (D) (No change.)

(3) (No change.)

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

§330.242. Monitor-Well Construction Specifications.

(a) The following specifications must [~~shall~~] be used for the installation of groundwater monitoring wells at municipal solid waste [~~solid-waste~~] landfills. Equivalent alternatives to these specifications may be used if prior written approval is obtained in advance from the executive director.

(1) Drilling.

(A) Monitoring wells must [~~shall~~] be drilled by a Texas-licensed driller who is qualified to drill and install monitoring wells. The installation and development shall [~~must~~] be supervised by a licensed professional geoscientist [~~qualified geologist~~] or engineer who is familiar with the geology of the area.

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

(D) During drilling of the monitoring well, a log of the boring shall be made by a licensed professional geoscientist [~~qualified geologist~~] or engineer who is familiar with the geology of the area.

(2) Casing, screen, filter pack, and seals.

(A) The well casing shall be: two to four inches in diameter; NSF-certified polyvinyl chloride (PVC) [~~PVC~~] Schedule 40 or 80 pipe, flush-thread, screw joint (no glue or solvents); polytetrafluorethylene (PTFE, such as Teflon) tape or O-rings in the joints; no collar couplings. The top of the casing shall be at least two feet above ground level. Where high levels of volatile organic compounds or corrosive compounds are anticipated, stainless steel or PTFE casing and screen may be used, subject to approval by the executive director. Four-inch diameter casing is recommended because it allows larger volume samples to be obtained and provides easier access for development, pumps, and repairs. The casing shall be cleaned and packaged at the place of manufacture; the packaging shall include a PVC wrapping on each section of casing to keep it from being contaminated prior to installation. The casing shall be free of ink, labels, or other markings. The casing (and screen) shall be centered in the hole to allow installation of a good filter pack and annular seal, using appropriately placed centralizers. The top of the casing shall be protected by a threaded or slip-on top cap or by a sealing cap or screw-plug seal inserted into the top of the casing. The cap shall be vented to prevent buildup of methane or other gases and shall be designed to prevent moisture from entering the well.

(B) (No change.)

(C) The filter pack, placed between the screen and the well bore, shall consist of pre-packaged, inert, clean silica sand or glass beads; it shall extend from one to four feet above the top of the screen. Open stockpile sources of sand or gravel are not permitted. The filter

pack usually has a 30% finer grain size that is about four to ten [~~10~~] times larger than the 30% finer grain size of the water- bearing zone; the filter pack should have a uniformity coefficient less than 2.5. The filter pack should be placed with a tremie pipe to ensure that the material completely surrounds the screen and casing without bridging. The tremie pipe shall be steam cleaned prior to the first well and before each subsequent well.

(D) The annular seal shall be placed on top of the filter pack and shall be at least two feet thick. It should be placed in the zone of saturation to maintain hydration. The seal should be composed of coarse-grain sodium bentonite, coarse-grit sodium bentonite, or bentonite grout. Special care should be taken to ensure that fine material or grout does not plug the underlying filter pack. Placement of a few inches of pre-packaged clean fine sand on top of the filter pack will help to prevent migration of the annular seal material into the filter pack. The seal should be placed on top of the filter pack with a steam-cleaned tremie pipe to ensure good distribution and should be tamped with a steam-cleaned rod to determine that the seal is thick enough. The bentonite shall be hydrated with clean water prior to any further activities on the well and left to stand until hydration is complete (eight to 12 hours, depending on the grain size of the bentonite). If a bentonite-grout (without cement) casing seal is used in the well bore, then it may replace the annular seal described in this paragraph [~~above~~].

(E) (No change.)

(3) - (5) (No change.)

(b) - (d) (No change.)

(e) Reporting. Monitoring well installation and construction details must [~~shall~~] be submitted on forms available from the commission and must [~~shall~~] be completed and submitted within 30 days of well completion. A copy of the detailed geologic log of the boring, any particle size or other sample data from the well, and a site map drawn to scale showing the location of all monitoring wells must [~~shall~~] be submitted to the executive director at the same time. The licensed driller should be familiar with the forms required by other agencies; a copy of those forms must [~~shall~~] also be submitted to the commission.

(f) (No change.)

(g) Plugging and abandonment. Any monitoring well that is no longer used shall be properly abandoned and plugged in accordance with 16 TAC §76.702 (relating to Responsibilities of the Licensee and Landowner Well Drilling, Completion, Capping, and Plugging) and §76.1004 (relating to Technical Requirements Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones) [~~§338.48 of this title (relating to Well Plugging and Capping)~~]. No abandonment shall take place without prior authorization in writing by the executive director.

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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Director, Environmental Law Division

Texas Commission on Environmental Quality

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SUBCHAPTER L. LOCATION RESTRICTIONS

30 TAC §§330.303 - 330.305

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.024, which authorizes the commission to establish standards of operation for the management and control of solid waste; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105; THSC, §361.024; and Texas Civil Statutes, Article 3271b, the Act.

§330.303. Fault Areas.

(a) New municipal solid waste landfill (MSWLF) units and lateral expansions shall not be located within 200 feet of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the executive director that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment. The owner or operator shall submit the demonstration with a permit application, a permit amendment application, or a permit transfer request.

(b) Applications submitted for the operation of sites located within areas that may be subject to differential subsidence or active geological faulting must [~~shall~~] include detailed fault studies. When an active fault is known to exist within 1/2 [~~one-half~~] mile of the site, the site must [~~shall~~] be investigated for unknown faults. Areas experiencing withdrawal of crude oil, natural gas, sulfur, etc., or significant amounts of groundwater must [~~shall~~] be investigated in detail for the possibility of differential subsidence or faulting that could adversely affect the integrity of landfill liners. Studies of differential subsidence or faulting [~~Such studies~~] shall be conducted under the direct supervision of a licensed professional engineer experienced in geotechnical engineering or a licensed professional geoscientist [~~geologist~~] qualified to evaluate [~~such~~] conditions of differential subsidence or faulting. The studies must [~~shall~~] establish the limits (both upthrown and downthrown) of the zones of influence of all active faulted areas within the site vicinity. Unless the applicant can provide substantial evidence that the zone of influence will not affect the site, no solid waste disposal shall be accomplished within a zone of influence of active geological faulting or differential subsidence because active faulting results in slippage along failure planes, thus creating preferred seepage paths for liquids. The studies must [~~shall~~] include information or data on the items in paragraphs (1) - (12) of this subsection, as applicable:

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

§330.304. Seismic Impact Zones.

For the purposes of this section, a seismic impact zone is defined as an area with a 10% or greater probability that the maximum horizontal acceleration in rock, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years. Maximum horizontal acceleration is defined as the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment. Lithified earth material is defined as all rocks, including all

naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface. New municipal solid waste landfill units and lateral expansions shall not be located in seismic impact zones, unless the owner or operator demonstrates to the executive director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator shall submit the demonstration with a permit application, a permit amendment application, or a permit transfer. The demonstration must [~~shall~~] become part of the operating record once approved.

§330.305. Unstable Areas.

For the purposes of this section, an unstable area is defined to be a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of a landfill's structural components responsible for preventing releases from the landfill; unstable areas can include poor foundation conditions, areas susceptible to mass movement, and karst terrains. Owners or operators of new municipal solid waste landfill (MSWLF) units, existing MSWLF units, and lateral expansions located in an unstable area shall demonstrate that engineering measures have been incorporated into the MSWLF unit's design to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted. The owner or operator shall submit the demonstration with a permit application, a permit amendment application, or a permit transfer. The demonstration must [~~shall~~] become part of the operating record once approved. The owner or operator shall consider the following factors, at a minimum, when determining whether an area is unstable:

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

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

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SUBCHAPTER N. LANDFILL MINING

30 TAC §330.415, §330.416

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.024, which authorizes the commission to establish standards of operation for the management and control of solid waste; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105; THSC, §361.024; and Texas Civil Statutes, Article 3271b, the Act.

§330.415. Additional Requirements for Municipal Solid Waste Mining Facilities.

(a) Within 30 days after the approval of a registration of a municipal solid waste (MSW) facility, the owner or operator shall submit three copies of the final approved site development plan [~~Site Development Plan~~] to the executive director. These copies must [~~shall~~] be loose-leaf bound and must [~~shall~~] include all drawings and sketches. The outside binder must [~~shall~~] be marked "Approved Site Development Plan" and must [~~shall~~] indicate the date of executive director approval. The executive director may allow an extension of the deadline if work required cannot reasonably be completed within 30 days.

(b) If at any time during the life of the site the site owner or operator becomes aware of any condition in the approved site development plan [~~Site Development Plan~~] that necessitates a change to accommodate new technology or improved methods or that makes it impractical to keep the site in compliance, the site owner or operator shall submit to the executive director a revised plan.

(c) All drawings or other sheets prepared for revisions to a site development plan [~~Site Development Plan~~] or other previously approved documents, that may be required by this subchapter, must [~~shall~~] be submitted in triplicate. The revised pages must [~~shall~~] be marked for the current revision (i.e., "Revision Number 3"), dated, and punched for insertion into the loose-leaf binder. Drawings must [~~shall~~] be 8 1/2 by 11 inches or 11 by 17 inches. However, standard-sized drawings (24 by 36 inches) folded to 8 1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret. All revised engineering drawings must [~~shall~~] be signed and sealed by the licensed professional engineer [~~a Registered Professional Engineer~~] responsible for their preparation and must [~~shall~~] be included in the loose-leaf binder. All revised geological drawings shall be signed and sealed by the licensed professional geoscientist responsible for their preparation and must be included in the loose-leaf binder.

(d) Prior to the beginning of initial excavation or construction for an MSW [~~a municipal solid waste~~] mining facility, a preconstruction conference shall be held. All aspects of the application, construction activities, and inspections shall be discussed. An initial preconstruction conference shall be held within 90 days after the issuance of a registration. Executive director representatives and owner's representatives, including the engineer, the geotechnical consultant, the contractor, and the site manager, shall attend the preconstruction conference.

(e) (No change.)

(f) The MSW [~~municipal solid waste~~] mining facility shall not process solid waste until the executive director has confirmed in writing that all applicable submissions required by the registration, the approved site development plan [~~Site Development Plan~~], and this chapter have been received and found to be acceptable, and that construction is in compliance with the application and the approved site development plan [~~Site Development Plan~~]. If the executive director has not provided a written or verbal response within 14 days of completion of the pre-opening inspection, the facility shall be considered approved for mining.

§330.416. Registration Application Preparation.

(a) General instruction and title page. To assist the executive director in evaluating the technical merits of a landfill mining facility, a site development plan shall be prepared and submitted to the commission along with a Registration Application Form. The site development

plan shall be sealed by a licensed [~~registered~~] professional engineer in accordance with the provisions of 22 TAC §131.166 (relating to Engineers' Seals). All submittals must [~~shall~~] be in a complete final form. The site development plan must [~~shall~~] contain all of the information specified in this section. A title page must [~~shall~~] show the name of the project, the county (and city if applicable) in which the proposed project is located, the name of the applicant, the name of the engineer, the date the application was prepared, and the latest date the application was revised.

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

(f) Soil boring plan approval. The applicant is responsible for submitting to the executive director a soil boring plan that conforms [~~Soil Boring Plan which shall conform~~] to the requirements found in the applicable subchapter. The soil boring plan [~~Soil Boring Plan~~] shall be approved by the executive director prior to initiation of the work.

(g) Permanent site benchmark. A permanent benchmark must [~~shall~~] be established at the site in an area of the site that is readily accessible. This benchmark must [~~shall~~] be a bronze or other suitable metal survey marker set in concrete at a sufficient depth to retain a stable and distinctive location and be of sufficient size to withstand the deteriorating forces of nature to best achieve this goal. The benchmark elevation and survey date must [~~shall~~] be stamped on it. The benchmark elevation must [~~shall~~] be surveyed from a known National Geodetic Survey benchmark or other compatible and comparable benchmark. The location and elevation of the reference benchmark and the permanent benchmark must [~~shall~~] be identified on a map and must [~~shall~~] be included in the site development plan [~~Site Development Plan~~]. Horizontal monumentation must [~~shall~~] be in accordance with 22 TAC §663.15 (relating to Precision) of the Texas Board of Professional Land Surveying rules. Vertical control precision must [~~shall~~] be ±0.1 feet relative to the elevation of the benchmark of origin.

(h) - (k) (No change.)

(l) Access. To assist the executive director in evaluating the impact of the facility on the surrounding roadway system, the applicant shall provide the following:

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

(4) an access roadway map showing all area roadways within a mile of the facility. The data and analysis required in paragraphs (1) - (3) [~~(1), (2), and (3)~~] of this subsection must [~~shall~~] be keyed to this map.

(m) Site plans. To assist the executive director in evaluating the impact of the facility on the environment, public safety, and public health, the applicant shall provide the following.

(1) Surface water protection plan. The surface water protection plan shall be prepared by a licensed [~~registered~~] professional engineer. At a minimum the applicant shall provide all of the following.

(A) - (D) (No change.)

(E) The test pit evaluation report shall be prepared by an engineer. Prior approval of a test pit plan must be obtained from the executive director before excavation of test pits including location and depth of all test pits. The applicant shall include a discussion and information on the following:

(i) - (ii) (No change.)

(iii) a TCLP of each representative type of waste excavated must [~~shall~~] be included in the report. Additionally, waste excavated from each test pit must [~~shall~~] be analyzed for asbestos and polychlorinated biphenyl [~~PCBs~~]. Consideration should be given to analysis of waste material from each test pit for hazardous waste constituents.

(iv) - (ix) (No change.)

(F) In cases where a geologic/hydrogeologic report is determined to be needed by the executive director, the geologic/hydrogeologic report shall be prepared and signed by a licensed professional engineer or geoscientist [~~an engineer or qualified geologist/hydrogeologist~~]. If determined to be needed by the executive director, the applicant shall include discussion and information on all of the following:

(i) a description of the regional geology of the area. This section must [~~shall~~] include:

(I) (No change.)

(II) a description of the generalized stratigraphic column in the facility area from the base of the lowermost aquifer capable of providing usable groundwater [~~ground water~~], or from a depth of 1,000 feet, whichever is less, to the land surface. The geologic age, lithology, variation in lithology, thickness, depth geometry, hydraulic conductivity, and depositional history of each geologic unit should be described based upon available geologic information.

(ii) (No change.)

(iii) a description of the regional aquifers in the vicinity of the facility based upon published and open- file sources. The section must [~~shall~~] provide:

(I) - (VI) (No change.)

(VII) an estimate of the rate of groundwater [~~ground-water~~] flow;

(VIII) typical values or a range of values for total dissolved solids content of groundwater [~~ground water~~] from the aquifers;

(IX) (No change.)

(X) the present use of groundwater [~~ground water~~] withdrawn from aquifers in the vicinity of the facility. The identification, location, and aquifer of all water wells within one mile of the property boundaries of the facility must [~~shall~~] be provided.

(iv) a subsurface investigation report. If determined to be needed by the executive director, the subsurface investigation report must [~~shall~~] include all or any part of the following details. The report must [~~shall~~] describe all borings drilled on-site to test soils and characterize groundwater [~~ground water~~] and must [~~shall~~] include a site map drawn to scale showing the surveyed locations and elevations of the boring. Boring logs must [~~shall~~] include a detailed description of materials encountered including any discontinuities such as fractures, fissures, slickensides, lenses, or seams. Each boring must [~~shall~~] be presented in the form of a log that contains, at a minimum, the boring number; surface elevation and location coordinates; and a columnar section with text showing the elevation of all contacts between soil and rock layers, description of each layer using the unified soil classification [~~Unified Soil Classification~~], color, degree of compaction, and moisture content. A key explaining the symbols used on the boring logs and the classification terminology for soil type, consistency, and structure must [~~shall~~] be provided.

(I) - (VI) (No change.)

(v) a groundwater [~~ground water~~] investigation report. If required by the executive director, this report must [~~shall~~] establish and present the groundwater [~~ground water~~] flow characteristics at the site and must [~~which shall~~] include groundwater [~~ground water~~] elevation, gradient, and direction of flow. The flow characteristics

and most likely pathway(s) for pollutant migration must [shall] be discussed in a narrative format and shown graphically on a piezometric contour map. The groundwater [ground water] data must [shall] be collected from piezometers installed at the site. The minimum number of piezometers required for the site must [shall] be three for sites of five acres or less; [,] for sites greater than five acres the total number of piezometers required must [shall] be three piezometers plus one piezometer for each additional five acres or fraction thereof unless otherwise approved by the executive director.

(G) The application shall demonstrate the processing facility is designed so as not to contaminate the groundwater and so as to protect the existing groundwater quality from degradation. At a minimum, groundwater protection must [shall] consist of all of the following. [:]

(i) (No change.)

(ii) Groundwater [Ground water] monitor system. If required by the executive director, a groundwater [ground water] monitoring system must [shall] be designed and installed such that the system will reasonably assure detection of any contamination of the groundwater [ground water] before it migrates beyond the boundaries of the processing area.

(I) - (II) (No change.)

(iii) (No change.)

(H) The facility plan and facility layout shall be prepared by a licensed [registered] professional engineer. All proposed facilities, structures, and improvements must [shall] be clearly shown and annotated on this drawing. The plan must [shall] be drawn to standard engineering scale. Any necessary details or sections must [shall] be included. As a minimum the plan must [shall] show property boundaries, fencing, internal roadways, processing area, facility office, sanitary facilities, potable water facilities, storage areas, etc. If phasing is proposed for the facility, a separate facility plan for each phase is required.

(I) (No change.)

(J) The health and safety plan must [shall] be composed of a descriptive narrative describing types of equipment and methods of its use for all of the following: [.]

(i) air [Air] monitoring; [.]

(ii) radiation [Radiation] monitoring; [.]

(iii) pathogen [Pathogen] monitoring; [.]

(iv) hazardous [Hazardous] constituent monitoring; [.]

(v) personal [Personal] protective equipment; [.]

(vi) decontamination [Decontamination] plans; [.]

(vii) emergency [Emergency] response plans; and [.]

(viii) fire [Fire] protection.

(K) Contingency plans must include a description of the courses of action which should be taken in response to abnormal or unsafe events that may occur during excavation or material processing. The contingency plan must address hazard evaluation and protection from potential hazards, including engineering controls, personal protection equipment, and air monitoring techniques. The plan must include decontamination procedures, on-site communication procedures, and emergency procedures. The contingency plan must [shall] be composed of a narrative describing actions taken in response to all of the following: [.]

(i) hazardous [Hazardous] constituents; [.]

(ii) leachate; [Leachate.]

(iii) drums; [Drums.]

(iv) compressed [Compressed] gas cylinders; [.]

(v) unanticipated [Unanticipated] releases; [.]

(vi) unanticipated [Unanticipated] emergency; [.]

(vii) fires [Fires] and explosions; [.]

(viii) hydrogen [Hydrogen] sulfide; and [.]

(ix) respiratory [Respiratory] protection.

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

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

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303061
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 29, 2003
For further information, please call: (512) 239-0348

CHAPTER 331. UNDERGROUND INJECTION CONTROL

The Texas Commission on Environmental Quality (commission) proposes amendments to §§331.2, 331.62, 331.65, 331.144, 331.163 and new §331.21.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 405, 77th Legislature, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The Texas Geoscience Practice Act (the Act) requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The primary purpose of the proposed amendments is to establish regulations for the public practice of geoscience in conformance with the Act by requiring a person who prepares and submits geoscientific information to the commission to be a licensed professional geoscientist. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act. According to the bill analysis prepared at the time of passage, the ultimate purpose of the Act was public safety through the public registration of the practice of geoscience.

SECTION BY SECTION DISCUSSION

Throughout these sections, the commission has revised the words "shall" and "must," when needed, to reflect guidance provided in the Legislative Council's Drafting Manual. Administrative changes are also proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

Proposed §331.2, Definitions, amends the introductory paragraph by deleting the word "shall" and the phrase "unless the context clearly indicates otherwise." The definition of licensed professional geoscientist is proposed to be added as new paragraph (51). The remaining paragraphs are proposed to be renumbered accordingly.

Proposed new §331.21, Required Submission of Geoscientific Information, requires that all geoscientific information submitted to the agency under this chapter shall be prepared by or under the supervision of a licensed professional geoscientist or licensed professional engineer and shall be signed, sealed, and dated by the licensed professional geoscientist or licensed professional engineer in accordance with the Texas Geoscience Practice Act and the Texas Engineering Practice Act.

Proposed §331.62, Construction Standards, adds a licensed professional geoscientist as a person qualified to supervise all phases of well construction and all phases of any well workover. The licensed professional geoscientist shall be knowledgeable and experienced in practical drilling engineering and be familiar with the special conditions and requirements of injection well construction.

Proposed §331.65, Reporting Requirements, adds a licensed professional geoscientist as a person qualified to prepare and seal completion reports.

Proposed §331.144, Approval of Plugging and Abandonment, adds a licensed professional geoscientist as a person qualified to certify the plugging and abandonment of wells in accordance with a plugging and abandonment plan.

Proposed §331.163, Well Construction Standards, adds a licensed professional geoscientist as a person qualified to supervise all phases of well construction and all phases of any well workover. The licensed professional geoscientist shall be knowledgeable and experienced in practical drilling engineering and familiar with the special conditions and requirements of injection well construction.

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency; however, there may be fiscal implications to the agency if the agency elects to reimburse staff for the annual renewal fees. The fees associated with obtaining the professional geoscientist license is $200 to cover the application and first- year license, and $150 per year after the first year.

Ms. Conrad also determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the commission. The proposed rules might impact other state agencies or local governments with staff geoscientists who need to become licensed under these rules. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has 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 is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined 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, 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 establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules are intended to establish procedures to require that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists. Therefore, it is not anticipated that the proposed rules will 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 commission concludes that these proposed rules do not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, 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.

In this case, the proposed amendments to Chapter 331 do not meet any of these requirements. First, there are no federal standards that these proposed rules would exceed. Second, the proposed rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these proposed rules. Fourth, the commission proposes these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

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

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The proposed rules would substantially advance this stated purpose by requiring that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rulemaking. These rules simply require that specific portions of applications or necessary data submitted to the commission be produced, signed, sealed, and dated by a qualified professional individual who has demonstrated his or her qualifications by obtaining a license to engage in the public practice of geoscience from the Texas Board of Professional Geoscientists. These rules do not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., June 30, 2003, and should reference Rule Log Number 2001-051F-331-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §331.2, §331.21

STATUTORY AUTHORITY

The amendment and new section are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

These proposed amendment and new section implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§331.2. Definitions.

General definitions can be found in Chapter 3 of this title (relating to Definitions). The following words and terms, when used in this chapter, [shall] have the following meanings [, unless the context clearly indicates otherwise].

(1) - (14) (No change.)

(15) Caprock - A geologic formation typically overlying the crest and sides of a salt stock. The caprock consists of a complex assemblage of minerals including calcite ($CaCO_3$) [($CaCO3$)], anhydrite ($CaSO_4$) [($CaSO4$)], and accessory minerals. Caprocks often contain lost circulation zones characterized by rock layers of high porosity and permeability.

(16) - (21) (No change.)

(22) Commercial underground injection control [Underground Injection Control] (UIC) Class I well facility - Any waste management facility that accepts, for a charge, hazardous or nonhazardous industrial solid waste for disposal in a UIC Class I injection well, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(23) - (24) (No change.)

(25) Cone of influence - The potentiometric surface area around the injection well within which increased injection zone pressures caused by injection of wastes would be sufficient to drive fluids into an underground source of drinking water [(USDW)] or freshwater aquifer.

(26) Confining zone - A part of a formation, a formation, or group of formations between the injection zone and the lowermost underground source of drinking water [USDW] or freshwater aquifer that acts as a barrier to the movement of fluids out of the injection zone.

(27) - (37) (No change.)

(38) Fresh water - Water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

(A) For the purpose of this subchapter, it will be presumed that water is suitable and feasible for beneficial use for any lawful purpose only if:

(i) (No change.)

(ii) the groundwater [ground water] contains fewer than 10,000 milligrams per liter (mg/L) [mg/l] total dissolved solids; and

(iii) (No change.)

(B) This presumption may be rebutted upon a showing by the executive director or an affected person that water containing greater than or equal to 10,000 mg/L [mg/l] total dissolved solids can be put to a beneficial use.

(39) - (47) (No change.)

(48) Intermediate casing - A string of casing with diameter intermediate between that of the surface casing and that of the smaller long string [long-string] or production casing, and which is set and cemented in a well after installation of the surface casing and prior to installation of the long string [long-string] or production casing.

(49) - (50) (No change.)

(51) Licensed professional geoscientist - A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(52) [(51)] Liner - An additional casing string typically set and cemented inside the long string casing and occasionally used to extend from base of the long string casing to or through the injection zone.

(53) [(52] Long string casing or production casing - A string of casing that is set inside the surface casing and that usually extends to or through the injection zone.

(54) [(53)] Lost circulation zone - A term applicable to rotary drilling of wells to indicate a subsurface zone which is penetrated by a wellbore, and which is characterized by rock of high porosity and permeability, into which drilling fluids flow from the wellbore to the degree that the circulation of drilling fluids from the bit back to ground surface is disrupted or "lost."

(55) [(54)] Mine area - The area defined by a line through the ring of designated monitor wells installed to monitor the production zone.

(56) [(55] Mine plan - A map of adopted mine areas and an estimated schedule indicating the sequence and timetable for mining and any required aquifer restoration.

(57) [(56)] Monitor well - Any well used for the sampling or measurement of any chemical or physical property of subsurface strata or their contained fluids.

(A) Designated monitor wells are those listed in the production area authorization for which routine water quality sampling is required.

(B) Secondary monitor wells are those wells in addition to designated monitor wells, used to delineate the horizontal and vertical extent of mining solutions.

(C) Pond monitor wells are wells used in the subsurface surveillance system near ponds or other pre- injection units.

(58) [(57)] Motor vehicle waste disposal well - A well used for the disposal of fluids from vehicular repair or maintenance activities, including, but not limited to, repair and maintenance facilities for cars, trucks, motorcycles, boats, railroad locomotives, and airplanes.

(59) [(58)] New injection well - Any well, or group of wells not an existing injection well.

(60) [(59] New waste stream - A waste stream not permitted.

(61) [(60)] Non-commercial facility - A Class I permitted facility which operates only non-commercial wells.

(62) [(61)] Non-commercial underground injection control (UIC) [UIC] Class I well facility - A UIC Class I permitted facility where only non-commercial wells are operated.

(63) [(62)] Non-commercial well - An underground injection control [A UIC] Class I injection well which disposes of wastes that are generated on-site, at a captured facility or from other facilities owned or effectively controlled by the same person.

(64) [(63)] Off-site - Property which cannot be characterized as on-site.

(65) [(64)] On-site - The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access, is also considered on-site property.

(66) [(65)] Out of service - The operational status when a well is not authorized to inject fluids, or the well itself is incapable of injecting fluids for mechanical reasons, maintenance operations, or well workovers or when injection is prohibited due to the well's inability to comply with the in-service operating standards of this chapter.

(67) [(66] Permit area - The area owned, or under lease by, the permittee which may include buffer areas, mine areas, and production areas.

(68) [(67)] Plugging - The act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

(69) [(68)] Point of injection - For a Class V well, the last accessible sampling point prior to fluids being released into the subsurface environment.

(70) [(69)] Pollution - The contamination of water or the alteration of the physical, chemical, or biological quality of water:

(A) that makes it harmful, detrimental , or injurious:

(i) to humans, animal life, vegetation, or property; or

(ii) to public health, safety, or welfare; or [,]

(B) that impairs the usefulness or the public enjoyment of the water for any lawful and reasonable purpose.

(71) [(70)] Pre-injection units - The on-site aboveground [above-ground] appurtenances, structures, equipment, and other fixtures including the injection pumps, filters, tanks, surface impoundments, and piping for wastewater transmission between any such facilities and the well that are, or will be, used for storage or processing of waste to be injected, or in conjunction with an injection operation.

(72) [(71)] Production area - The area defined by a line generally through the outer perimeter of injection and recovery wells used for mining.

(73) [(72)] Production area authorization - A document, issued under the terms of an injection well permit, approving the initiation of mining activities in a specified production area within a permit area.

(74) [(73)] Production zone - The stratigraphic interval extending vertically from the shallowest to the deepest stratum into which mining solutions are authorized to be introduced. .

(75) [(74)] Radioactive waste - Any waste which contains radioactive material in concentrations which exceed those listed in 10 Code of Federal Regulations [(CFR)] Part 20, Appendix B, Table II, Column 2, [and] as amended.

(76) [(75)] Restoration demonstration - A test or tests conducted by a permittee to simulate production and restoration conditions and verify or modify the fluid handling values submitted in the permit application.

(77) [(76)] Restored aquifer - An aquifer whose local groundwater quality has, by natural or artificial processes, returned to levels consistent with restoration table values or better as verified by an approved sampling program.

(78) [~~(77)~~] Salt cavern - A hollowed-out void space that has been purposefully constructed within a salt stock, typically by means of solution mining by circulation of water from a well or wells connected to the surface.

(79) [~~(78)~~] Salt cavern confining zone - A zone between the salt cavern injection zone and all underground sources of drinking water [~~USDWs~~] and freshwater aquifers, that acts as a barrier to movement of waste out of a salt cavern injection zone, and consists of the entirety of the salt stock excluding any portion of the salt stock designated as an underground injection control (UIC) [a ~~UIC~~] Class I salt cavern injection zone or any portion of the salt stock occupied by a UIC Class II or Class III salt cavern or its disturbed salt zone.

(80) [~~(79)~~] Salt cavern injection interval - That part of a salt cavern injection zone consisting of the void space of the salt cavern into which waste is stored or disposed of, or which is capable of, receiving waste for storage or disposal.

(81) [~~(80)~~] Salt cavern injection zone - The void space of a salt cavern that receives waste through a well, plus that portion of the salt stock enveloping the salt cavern, and extending from the boundaries of the cavern void outward a sufficient thickness to contain the disturbed salt zone, and an additional thickness of undisturbed salt sufficient to ensure that adequate separation exists between the outer limits of the injection zone and any other activities in the domal area.

(82) [~~(81)~~] Salt cavern solid waste disposal well or salt cavern disposal well - For the purposes of this chapter [~~relating to Underground Injection Control~~], regulations of the commission, and not to underground injection control (UIC) [~~UIC~~] Class II or UIC Class III wells in salt caverns regulated by the Texas Railroad Commission, a salt cavern disposal well is a type of UIC Class I injection well used:

(A) to solution mine a waste storage or disposal cavern in naturally occurring salt; and/or

(B) to inject hazardous, industrial, or municipal waste into a salt cavern for the purpose of storage or disposal of the waste.

(83) [~~(82)~~] Salt dome - A geologic structure that includes the caprock, salt stock, and deformed strata surrounding the salt stock.

(84) [~~(83)~~] Salt stock - A geologic formation consisting of a relatively homogeneous mixture of evaporite minerals dominated by halite (NaCl) that has migrated from originally tabular beds into a vertical orientation.

(85) [~~(84)~~] Sanitary waste - Liquid or solid waste originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned.

(86) [~~(85)~~] Septic system - A well that is used to emplace sanitary waste below the surface, and is typically composed of a septic tank and subsurface fluid distribution system or disposal system.

(87) [~~(86)~~] Stratum - A sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock or material.

(88) [~~(87)~~] Subsurface fluid distribution system - An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

(89) [~~(88)~~] Surface casing - The first string of casing (after the conductor casing, if any) that is set in a well.

(90) [~~(89)~~] Temporary injection point - A method of Class V injection that uses push point technology (injection probes pushed into the ground) for the one-time injection of fluids into or above an underground source of drinking water [a ~~USDW~~].

(91) [~~(90)~~] Total dissolved solids (TDS) - The total dissolved (filterable) solids as determined by use of the method specified in 40 Code of Federal Regulations [~~CFR~~] Part 136, as amended.

(92) [~~(91)~~] Transmissive fault or fracture - A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

(93) [~~(92)~~] Underground injection - The subsurface emplacement of fluids through a well.

(94) [~~(93)~~] Underground injection control (UIC) - The program under the federal Safe Drinking Water Act, Part C, including the approved Texas state program.

(95) [~~(94)~~] Underground source of drinking water (USDW) - An "aquifer" or its portions:

(A) which supplies drinking water for human consumption; or

(B) in which the groundwater contains fewer than l0,000 milligrams per liter [~~mg/l~~] total dissolved solids; and

(C) which is not an exempted aquifer.

(96) [~~(95)~~] Upper limit - A parameter value established by the commission in a permit/production area authorization which when exceeded indicates mining solutions may be present in designated monitor wells.

(97) [~~(96)~~] Verifying analysis - A second sampling and analysis of control parameters for the purpose of confirming a routine sample analysis which indicated an increase in any control parameter to a level exceeding the upper limit. Mining solutions are assumed to be present in a designated monitor well if a verifying analysis confirms that any control parameter in a designated monitor well is present in concentration equal to, or greater than, the upper limit value.

(98) [~~(97)~~] Well - A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension, a dug hole whose depth is greater than the largest surface dimension, an improved sinkhole, or a subsurface fluid distribution system but does not include any surface pit, surface excavation, or natural depression.

(99) [~~(98)~~] Well injection - The subsurface emplacement of fluids through a well.

(100) [~~(99)~~] Well monitoring - The measurement by on-site instruments or laboratory methods of any chemical, physical, radiological, or biological property of the subsurface strata or their contained fluids penetrated by the wellbore.

(101) [~~(100)~~] Well stimulation - Several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, including, but not limited to, surging, jetting, blasting, acidizing, and hydraulic fracturing.

(102) [~~(101)~~] Workover - An operation in which a down-hole component of a well is repaired, the engineering design of the well is changed, or the mechanical integrity of the well is compromised. Workovers include operations such as sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this chapter, workovers do not include well stimulation operations.

§331.21. Required Submission of Geoscientific Information.
All geoscientific information submitted to the agency under this chapter shall be prepared by, or under the supervision of, a licensed professional geoscientist or a licensed professional engineer and shall be signed, sealed, and dated by the licensed professional geoscientist or licensed professional engineer in accordance with the Texas Geoscience Practice Act and the Texas Engineering Practice 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 D. STANDARDS FOR CLASS I WELLS OTHER THAN SALT CAVERN SOLID WASTE DISPOSAL WELLS

30 TAC §331.62, §331.65

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

These proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§331.62. Construction Standards.
All Class I wells shall be designed, constructed, and completed to prevent the movement of fluids that could result in the pollution of an underground source of drinking water (USDW).

(1) Design criteria. Casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well, including the post-closure [~~post closure~~] care period. The well shall be designed and constructed to prevent potential leaks from the well, to prevent the movement of fluids along the wellbore into or between USDWs, to prevent the movement of fluids along the wellbore out of the injection zone, to permit the use of appropriate testing devices and workover tools, and to permit continuous monitoring of injection tubing, long string casing, and annulus, as required by this chapter. All well materials must be compatible with fluids with which the materials may be expected to come into contact. A well shall be deemed to have compatibility as long as the materials used in the construction of the well meet or exceed standards developed for such materials by the American Petroleum Institute, the American Society for Testing Materials, or comparable standards acceptable to the executive director.

(A) - (B) (No change.)

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

(7) Logs and tests.

(A) Integrity testing. Appropriate logs and other tests shall be conducted during the drilling and construction of Class I wells. All logs and tests shall be interpreted by the service company which processed the logs or conducted the test; or by other qualified persons. A minimum of the following logs and tests shall be conducted:

(i) (No change.)

(ii) for surface casing;

(I) spontaneous potential, resistivity, natural gamma, and caliper logs before the casing is installed; [~~and~~]

(II) (No change.)

(III) [~~and~~] any other test required by the executive director;

(IV) (No change.)

(iii) for intermediate and long string casing: [~~;~~]

(I) spontaneous potential, resistivity, natural gamma, compensated density and/or neutron porosity, dipmeter/fracture finder, and caliper logs, before the casing is installed; [~~and~~]

(II) - (III) (No change.)

(iv) (No change.)

(B) Pressure tests. Surface casing shall be pressure tested to 1,000 pounds per square inch, gauge (psig) [~~psig~~] for at least 30 minutes, and long string casing shall be tested to 1,500 psig for at least 30 minutes, unless otherwise specified by the executive director.

(C) (No change.)

(8) (No change.)

(9) Construction and workover supervision. All phases of well construction and all phases of any well workover shall be supervised by qualified individuals acting under the responsible charge of a licensed, professional engineer or licensed professional geoscientist, with current registration under [~~pursuant to~~] the Texas Engineering Practice Act or Texas Geoscience Practice Act, who is knowledgeable and experienced in practical drilling engineering and who is familiar with the special conditions and requirements of injection well construction.

(10) (No change.)

§331.65. Reporting Requirements.

(a) Pre-operation reports. For new wells, including wells converting to Class I status, the requirements are as follows.

(1) Completion report. Within 90 days after the completion or conversion of the well, the permittee shall submit a Completion Report to the executive director. The report must [~~shall~~] include a surveyor's plat showing the exact location and giving the latitude and longitude of the well. The report must [~~shall~~] also include a certification that a notation on the deed to the facility property or on some other instrument which is normally examined during title search has been made stating the surveyed location of the well, the well permit number, and its permitted waste streams. The permittee shall also include in the report the following, prepared and sealed by a professional engineer or licensed professional geoscientist with current registration under the Texas Engineering Practice Act or Texas Geoscience Practice Act:

(A) - (K) (No change.)

(L) compliance with the casing and cementing performance standard in §331.62(5) of this title [~~(relating to Construction Standards)~~]; and

(M) (No change.)

(2) - (4) (No change.)

(b) Operating reports.

(1) Injection operation quarterly report. For non-commerical facilities only, within 20 days after the last day of the months of March, June, September, and December, the permittee shall submit to the executive director a quarterly report of injection operation on forms supplied by the executive director. These forms will comply with the reporting requirements of 40 Code of Federal Regulations (CFR) §146.69(a). The executive director may require more frequent reporting.

(2) Injection operation monthly report. Commercial [~~For commercial~~] facilities shall meet the following requirements. [~~only:~~]

(A) (No change.)

(B) The permittee shall submit to the commission within 20 days of the last day of each month a report of injection operations on forms provided by the commission. These forms shall comply with the reporting requirements of 40 CFR §146.69(a) [~~Code of Federal Regulations (CFR) 146.69(a)~~]. The executive director may require more frequent reporting.

(3) Injection zone annual report. For all facilities, the permittee shall submit annually with the December report of injection operation an updated graphic or other acceptable report of the pressure effects of the well upon its injection zone as required by §331.64(g) of this title (relating to [~~Ambient~~] Monitoring and Testing Requirements). To the extent this information is reasonably available, the report must [~~shall~~] also include:

(A) (No change.)

(B) a tabulation of data as required by §331.121(2)(B) of this title [~~(relating to Class I Wells)~~] for wells within the area of review that penetrate the injection zone or confining zone;

(C) - (F) (No change.)

(4) - (5) (No change.)

(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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SUBCHAPTER I. FINANCIAL RESPONSIBILITY

30 TAC §331.144

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§331.144. Approval of Plugging and Abandonment.

Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer or licensed professional geoscientist that plugging and abandonment has been accomplished in accordance with the plugging and abandonment plan, the executive director will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for plugging and abandonment of the well, unless the executive director has reason to believe that plugging and abandonment has not been in accordance with the plugging and abandonment plan. Financial assurance may not be released without the written approval of the executive director.

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 J. STANDARDS FOR CLASS I SALT CAVERN SOLID WASTE DISPOSAL WELLS

30 TAC §331.163

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§331.163. Well Construction Standards.

(a) - (g) (No change.)

(h) Construction supervision. All phases of well construction and all phases of any well workover shall be supervised by a professional engineer or licensed professional geoscientist, with current registration under [~~pursuant to~~] the Texas Engineering Practice Act or Texas Geoscience Practice Act, who is knowledgeable and experienced in practical drilling engineering and who is familiar with the special conditions and requirements of injection well construction.

(i) Approval of completion of the well construction stage. Prior to beginning cavern construction, the permittee shall obtain

written approval from the executive director which states that the well construction is in compliance with the applicable provisions of the permit. To obtain approval, the permittee shall submit to the executive director within 90 days of completion of well construction, including all logging, coring, and testing of the pilot hole, the following reports and certifications prepared and sealed by a professional engineer or licensed professional geoscientist with current registration under [~~pursuant to~~] the Texas Engineering Practice Act or Texas Geoscience Practice Act:

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

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

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Commission on Environmental Quality (commission) proposes amendments to §§335.1, 335.116, 335.123, 335.156, 335.172, 335.204, 335.348, and 335.553.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 405, 77th Legislature, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The Texas Geoscience Practice Act (the Act) requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The primary purpose of the proposed amendments is to establish regulations for the public practice of geoscience in conformance with the Act by requiring a person who prepares and submits geoscientific information to the commission to be a licensed professional geoscientist. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act. According to the bill analysis prepared at the time of passage, the ultimate purpose of the Act was public safety through the public registration of the practice of geoscience.

SECTION BY SECTION DISCUSSION

Throughout the sections, administrative changes are proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

Proposed §335.1, Definitions, amends the introductory paragraph by deleting the word "shall" and the phrase "unless the context clearly indicates otherwise." The definition of licensed professional geoscientist is proposed as new paragraph (85). The definition of person in paragraph (104) is proposed to be deleted because it is defined in 30 TAC Chapter 3, Definitions. Existing paragraphs (85) - (103) are proposed to be renumbered.

Proposed §335.116, Applicability of Groundwater Monitoring Requirements, replaces the term "qualified geologist" with "licensed professional geoscientist" regarding the demonstration of groundwater monitoring requirements.

Proposed §335.123, Closure and Post-Closure (Land Treatment Facilities), replaces the term "independent qualified soil scientist" with "licensed professional geoscientist" regarding certification of closures.

Proposed §335.156, Applicability of Groundwater Monitoring and Response, replaces the term "qualified geologist" with "licensed professional geoscientist." At the January 8, 2003 commission agenda for the post-closure rules (Rule Log No. 2000-048-335-WS), the text of §335.156(a)(2) was inadvertently adopted as the text for §335.156(b)(2). Therefore, the correct text of §335.156(b)(2) has been properly added as originally proposed in the post-closure rules.

Proposed §335.172, Closure and Post-Closure Care (Land Treatment Units), replaces the term "independent qualified soil scientist" with "licensed professional geoscientist."

Proposed §335.204, Unsuitable Site Characteristics, replaces the term "qualified geologist" with "licensed professional geoscientist."

Proposed §335.348, General Requirements for Remedial Investigations, adds new subsection (n) requiring that all engineering and geoscientific information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer or licensed professional geoscientist, and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act and the Texas Geoscience Practice Act and the licensing and registration boards under these acts.

Proposed §335.553, Required Information, adds the requirement that all engineering and geoscientific information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer or licensed professional geoscientist, and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act and the Texas Geoscience Practice Act and the licensing and registration boards under these acts.

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency; however, there may be fiscal implications to the agency if the agency elects to reimburse staff for the annual renewal fees. The fees associated with obtaining the professional geoscientist license is $200 to cover the application and first- year license, and $150 per year after the first year.

Ms. Conrad also determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the commission. The proposed rules might impact other state agencies or local governments with staff geologists who need to become licensed under these rules. No significant fiscal implications are anticipated for any individual or

business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has 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 rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined 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, 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 establish regulations allowing for the public practice of geoscience in agency procedures in accordance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules are intended to establish procedures to require that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists. Therefore, it is not anticipated that the proposed rules will 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 commission concludes that these proposed rules do not meet the definition of major environmental rule.

Furthermore, even if the proposed rules did meet the definition of a major environmental rule, the rules are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, 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.

In this case, the proposed rules do not meet any of these requirements. First, there are no federal standards that these rules would exceed. Second, the proposed rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these proposed rules. Fourth, the commission proposes these rules to allow for the public practice of geoscience in agency procedures in accordance with the Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in accordance with the Act. The proposed rules would substantially advance this stated purpose by requiring that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rules. These rules simply require that specific portions of applications or necessary data submitted to the commission be produced, signed, sealed, and dated by a qualified professional individual who has demonstrated his or her qualifications by obtaining a license to engage in the public practice of geoscience from the Texas Board of Professional Geoscientists. These proposed rules do not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the proposed rule changes do not modify or alter standards set forth in existing rules, and do not govern or authorize any actions subject to the CMP. The proposed rulemaking would require a person who prepares and submits geoscientific information to the agency to be a licensed professional geoscientist. The commission invites public comment on the consistency determination of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., June 30, 2003, and should reference Rule Log Number 2001-051G-335-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §335.1

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§335.1. Definitions.

In addition to the terms defined in Chapter 3 of this title (relating to Definitions), the following words and terms, when used in this chapter, [~~shall~~] have the following meanings[~~, unless the context clearly requires otherwise~~].

(1)-(84) (No change.)

(85) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(86) [~~(85)~~] Liner--A continuous layer of natural or manmade materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste or hazardous waste, hazardous waste constituents, or leachate.

(87) [~~(86)~~] Management or hazardous waste management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(88) [~~(87)~~] Manifest--The waste shipping document which accompanies and is used for tracking the transportation, disposal, treatment, storage, or recycling of shipments of hazardous wastes or Class 1 industrial solid wastes. The form used for this purpose is TNRCC-0311 (Uniform Hazardous Waste Manifest) which is furnished by the executive director or may be printed through the agency's "Print Your Own Manifest Program."

(89) [~~(88)~~] Manifest document number--A number assigned to the manifest by the commission for reporting and recordkeeping purposes.

(90) [~~(89)~~] Military munitions--All ammunition products and components produced or used by or for the Department of Defense (DOD) or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term "military munitions":

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(91) [~~(90)~~] Miscellaneous unit--A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research Development and Demonstration Permits).

(92) [~~(91)~~] Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(93) [~~(92)~~] Municipal hazardous waste--A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the EPA.

(94) [~~(93)~~] Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(95) [~~(94)~~] New tank system or new tank component--A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations (CFR) §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system.")

(96) [~~(95)~~] Off-site--Property which cannot be characterized as on-site.

(97) [~~(96)~~] Onground tank--A device meeting the definition of tank in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(98) [~~(97)~~] On-site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but

connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(99) [(98)] Open burning--The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

(100) [(99)] Operator--The person responsible for the overall operation of a facility.

(101) [(100)] Owner--The person who owns a facility or part of a facility.

(102) [(101)] Partial closure--The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(103) [(102)] PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

(104) [(103)] Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste storage, processing, or disposal facility in accordance with specified limitations.

[(104) Person--Any individual, corporation, organization, government, or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.]

(105)-(106) (No change.)

(107) Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code (USC), §§6921, *et seq.*)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i)-(xii) (No change.)

(B) For the purposes of this chapter, a "petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 USC, [United States Code] §§6921, *et seq.*)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) (No change.)

(108)-(130) (No change.)

(131) Solid waste--

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i)-(ii) (No change.)

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas in accordance with the Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas, or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the EPA in accordance with the federal Solid Waste Disposal Act, as amended by the RCRA, 42 United States Code, §§6901 *et seq.*, as amended; or

(iv) (No change.)

(B) A discarded material is any material which is:

(i) (No change.)

(ii) recycled, as explained in subparagraph (D) of this paragraph; [or]

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph; or [.]

(iv) (No change.)

(C)-(K) (No change.)

(132)-(163) (No change.)

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

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SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

30 TAC §335.116, §335.123

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§335.116. Applicability of Groundwater Monitoring Requirements.

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

(c) All or part of the groundwater monitoring requirements of this subchapter may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells (domestic, industrial, or agricultural) or to surface water. This demonstration must be in writing and must be kept at the facility. This demonstration shall [~~must~~] be certified by a licensed professional geoscientist [~~qualified geologist~~] or geotechnical engineer and must establish the following:

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

(d)-(g) (No change.)

§335.123. Closure and Post-Closure (Land Treatment Facilities).

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

(e) For the purpose of complying with 40 CFR §265.115 concerning certification of closure, when closure is completed, the owner or operator may submit to the executive director certification both by the owner or operator and by a licensed professional geoscientist [~~an independent qualified soil scientist~~], in lieu of an independent licensed [~~registered~~] professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(f) (No change.)

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

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SUBCHAPTER F. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

30 TAC §335.156, §335.172

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§335.156. Applicability of Groundwater Monitoring and Response.

(a) Except as provided in subsection (b) of this section, the rules pertaining to groundwater monitoring and response apply to owners and operators of facilities that process, store, or dispose of hazardous waste.

(1) (No change.)

(2) Except as provided in paragraph (3) of this subsection, all solid waste management units must comply with the requirements in §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). A surface impoundment, waste pile, land treatment unit, or landfill that receives hazardous waste after July 26, 1982, (hereinafter referred to as a regulated unit) must comply with the requirements of §§335.157 - 335.166 of this title (relating to Required Program; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) in lieu of §335.167 of this title for purposes of detecting, characterizing, and responding to releases to the uppermost aquifer. The financial responsibility requirements of §335.167 of this title apply to regulated units.

(3) (No change.)

(b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this section and §§335.157 - 335.166 of this title if:

(1) (No change.)

(2) he operates a unit which the commission finds:

(A) is an engineered structure;

(B) does not receive or contain liquid waste or waste containing free liquids;

(C) is designed and operated to exclude liquid, precipitation, and other run-on and run- off;

(D) has both inner and outer layer of containment enclosing the waste;

(E) has a leak detection system built into each containment layer for which continuing operation and maintenance will be provided during the active life of the unit and the closure and post- closure care periods; and

(F) to a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the post-closure care period.

[~~(2) All solid waste management units must comply with the requirements in §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). A surface impoundment, waste pile, land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a regulated unit) must comply with the requirements of §§335.157 - 335.166 of this title (relating to~~

~~Required Program; Groundwater Protection Standard; Hazardous Constituents; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) in lieu of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) for purposes of detecting, characterizing, and responding to releases to the uppermost aquifer. The financial responsibility requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) apply to regulated units.]~~

(3) (No change.)

(4) the commission finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the post-closure care period specified under 40 CFR §264.117. This demonstration shall [~~must~~] be certified by a licensed professional geoscientist [~~qualified geologist~~] or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator shall [~~must~~] base any predictions on assumptions that maximize the rate of liquid migration; or

(5) (No change.)

(c) Sections 335.157 - 335.166 of this title apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, these sections:

(1) (No change.)

(2) apply during the post-closure [~~post closure~~] care period under 40 CFR §264.117 if the owner or operator is conducting a detection monitoring program under §335.164 of this title; or

(3) (No change.)

§335.172. Closure and Post-Closure Care (Land Treatment Units).

(a) (No change.)

(b) For the purpose of complying with 40 CFR §264.115, when closure is completed, the owner or operator may submit to the executive director certification by a licensed professional geoscientist [~~an independent qualified soil scientist~~], in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

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

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

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SUBCHAPTER G. LOCATION STANDARDS FOR HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL

30 TAC §335.204

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§335.204. Unsuitable Site Characteristics.

(a) Storage or processing facilities (excluding storage surface impoundments).

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

(4) A storage or processing facility (excluding storage surface impoundments) may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the facility by a minimum of ten [~~10~~] feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} centimeters per second (cm/sec), or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) (No change.)

(5)-(8) (No change.)

(9) A storage or processing facility may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, shall [~~must~~] be determined by a licensed professional geoscientist [~~qualified geologist~~] or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual observation of the proposed site.

(b) Land treatment facilities.

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

(4) A land treatment facility may not be located in areas overlying regional aquifers unless:

(A) (No change.)

(B) the regional aquifer is separated from the base of the treatment zone by a minimum of ten [~~10~~] feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec, or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5)-(11) (No change.)

(12) A land treatment facility may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been

shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, shall [~~must~~] be determined by a licensed professional geoscientist [~~qualified geologist~~] or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual observation of the proposed site.

(c) Waste piles.

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

(4) A waste pile may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the base of the containment structure by a minimum of ten [~~10~~] feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) (No change.)

(5)-(10) (No change.)

(11) A waste pile may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, shall [~~must~~] be determined by a licensed professional geoscientist [~~qualified geologist~~] or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual observation of the proposed site.

(d) Storage surface impoundments.

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

(4) A storage surface impoundment may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the base of the containment structure by a minimum of ten [~~10~~] feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) (No change.)

(5)-(10) (No change.)

(11) A storage surface impoundment may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, shall [~~must~~] be determined by a licensed professional geoscientist [~~qualified geologist~~] or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual observation of the proposed site.

(e) Landfills. Any surface impoundment to be closed as a landfill (where wastes will remain after closure of the impoundment) is subject to the requirements for landfills.

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

(4) A landfill may not be located in areas overlying regional aquifers unless:

(A) (No change.)

(B) the regional aquifer is separated from the base of the containment structure by a minimum of ten [~~10~~] feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5)-(12) (No change.)

(13) A landfill may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, shall [~~must~~] be determined by a licensed professional geoscientist [~~qualified geologist~~] or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual observation of the proposed site.

(14) (No change.)

(f) (No change.)

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SUBCHAPTER K. HAZARDOUS SUBSTANCE FACILITIES ASSESSMENT AND REMEDIATION

30 TAC §335.348

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§335.348. General Requirements for Remedial Investigations.

(a) Unless otherwise directed by the commission, a remedial investigation as approved by the executive director shall be completed before the executive director's selection of the remedial action, except for removals and preliminary site investigations in accordance with [~~pursuant to~~] §335.346 of this title (relating to Removals and Preliminary Site Investigations).

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

(d) A remedial investigation may include the following, as appropriate to a particular facility, for the purpose of allowing the executive director to select an appropriate remedial action:

(1) investigations of surface water and sediments necessary to characterize hydrologic features such as surface drainage patterns, areas of erosion and sediment deposition, surface waters, floodplains, and actual or potential hazardous substance migration routes within these areas. Properties of surface and subsurface sediments, which would influence the type and rate of hazardous substance migration or affect the ability to implement alternative remedial actions, shall be characterized.

(2) investigations to adequately characterize the nature and extent of hazardous substances in the soils encompassing the facility. Properties associated with the soils, which would influence the type and rate of hazardous substance migration or affect the ability to implement alternative remedial actions, shall be characterized.

(3)-(7) (No change.)

(e) (No change.)

(f) A workplan for a remedial investigation shall be submitted to the executive director for final review and possible modifications and shall include the following:

(1) a sampling and analysis plan covering all sampling activities to be undertaken in accordance with [~~pursuant to~~] the remedial investigation;

(2) a quality assurance project plan to ensure the integrity of all samples taken in accordance with [~~pursuant to~~] the remedial investigation;

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

(g)-(i) (No change.)

(j) A report shall be prepared at the completion of the remedial investigation and submitted to the executive director for review, possible modification, and final approval.

(k)-(m) (No change.)

(n) All engineering and geoscientific information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer or licensed professional geoscientist, and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act and the Texas Geoscience Practice Act and the licensing and registration boards under these acts.

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 S. RISK REDUCTION STANDARDS

30 TAC §335.553

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§335.553. Required Information.

(a) (No change.)

(b) Risk Reduction Standard Number 3, the person shall conduct the activities set forth in paragraphs (1)-(4) of this subsection. The results of activities required by paragraphs (1) - (3) of this subsection may be combined to address a portion of a facility or one or more facilities of a similar nature or close proximity. The submittal shall be subject to review and approval by the executive director prior to carrying out the closure or remediation. Upon completion of the approved activity, the person shall submit the final report required by paragraph (4) of this subsection.

(1) The person shall prepare a remedial investigation report which contains sufficient documentation such as, but not limited to, descriptions of procedures and conclusions of the investigation to characterize the nature, extent, direction, rate of movement, volume, composition, and concentration of contaminants in environmental media of concern, including summaries of sampling methodology and analytical results. Information obtained from attempts to attain Risk Reduction Standard Number [~~Numbers~~] 1 or 2 may be submitted for this purpose.

(2)-(4) (No change.)

(c) (No change.)

(d) For Risk Reduction Standards Numbers 1, 2, and 3, attainment of cleanup levels shall be demonstrated by collection and analysis of samples from the media of concern. Persons shall utilize techniques described in SW 846, Test Methods for Evaluating Solid Waste, EPA [~~United States Environmental Protection Agency~~], or other available guidance in developing a sampling and analysis plan appropriate for the distribution, composition, and heterogeneity of contaminants and environmental media. A sufficient number of samples shall be collected and analyzed for individual compounds to both accurately assess the risk to human health and the environment posed by the facility or area and to demonstrate the attainment of cleanup levels. Non compound-specific analytical techniques (e.g., total petroleum hydrocarbons [~~Total Petroleum Hydrocarbons~~], total organic carbon [~~Total Organic Carbon~~], etc.) may, where appropriate for the nature of the wastes or contaminants, be used to aid in the determination of the lateral and vertical extent and volume of contaminated media; however, such non compound-specific analyses will serve only as indicator measures and must be appropriately supported by compound-specific analyses. Comparisons may be based on the following methods:

(1) (No change.)

(2) for a data set of ten [~~10~~] or more samples, statistical comparison of the results of analysis utilizing the 95% confidence limit of the mean concentration of the contaminant as determined by the following expression:
Figure: 30 TAC §335.553(d)(2) (No change.)

(3) (No change.)

(e) For Risk Reduction Standards Numbers 2 and 3, in determining toxicity information for contaminants (e.g., EPA [~~Environmental Protection Agency~~] carcinogen classification, type of toxicant, reference doses, carcinogenic slope factors, etc.), persons shall utilize values from the following sources in the order indicated. For Risk Reduction Standard Number 2, persons may utilize data from these sources that are more current than those used to derive the unadjusted medium-specific concentrations [~~MSCs~~] listed in §335.568 of this title (relating to Appendix II), provided that substantiating information is furnished to the executive director in the report required by §335.555(f) of this title (relating to Attainment of Risk Reduction Standard Number 2).

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

(3) EPA [~~United States Environmental Protection Agency~~] Criteria Documents;

(4)-(5) (No change.)

(f) For Risk Reduction Standards Numbers 2 and 3, persons determining cleanup levels for contaminated media characterized by non compound-specific analytical techniques (e.g., total petroleum hydrocarbons [~~Total Petroleum Hydrocarbons~~], total organic carbon [~~Total Organic Carbon~~], etc.) and for which individual compounds such as hazardous constituents are not present as contaminants, must at a minimum consider other scientifically valid published numeric criteria to address: adverse impacts on environmental quality; adverse impacts on the public welfare and safety; conditions that present objectionable characteristics (e.g., taste, odor, etc.); or conditions that make a natural resource unfit for use.

(g) All engineering and geoscientific information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer or licensed professional geoscientist, and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act and the Texas Geoscience Practice Act and the licensing and registration boards under these acts.

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

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CHAPTER 350. TEXAS RISK REDUCTION PROGRAM

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §350.1

The Texas Commission on Environmental Quality (commission) proposes an amendment to §350.1.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Senate Bill (SB) 405, 77th Legislature, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The Texas Geoscience Practice Act (the Act) requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The primary purpose of the proposed amendments is to establish regulations for the public practice of geoscience in conformance with the Act by requiring a person who prepares and submits geoscientific information to the commission to be a licensed professional geoscientist. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act. According to the bill analysis prepared at the time of passage, the ultimate purpose of the Act was public safety through the public registration of the practice of geoscience.

The proposed rules would require that engineering, geoscientific, and surveying information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer, a licensed professional geoscientist, or licensed professional surveyor and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act, the Texas Geoscience Practice Act, the Texas Professional Land Surveying Practices Act, and the licensing and registration boards under these acts. For professional engineers and professional land surveyors, this is not a new requirement. In the existing Chapter 350 rules, engineering plans, surveys, etc.

have had to be prepared by professional engineers and land surveyors, although only the requirement to use a professional land surveyor (§350.111(a)(3)) was specifically stated in the rules. The proposed rules now specifically state that all engineering, geoscientific, and surveying information shall be prepared and submitted by qualified professionals as set forth by their respective licensing and registration regulations. Qualified professionals include professional geoscientists, professional engineers, and professional land surveyors.

SECTION DISCUSSION

Throughout the section, administrative changes are proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

Proposed §350.1, Purpose, adds the requirement that all engineering, geoscientific, and surveying information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer, licensed professional geoscientist, or licensed professional surveyor and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act, the Texas Geoscience Practice Act, the Texas Professional Land Surveying Practices Act, and the licensing and registration boards under these acts.

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rule is in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rule. There will be no fiscal impact to the agency; however, there may be fiscal implications to the agency if the agency elects to reimburse staff for the annual renewal fees. The fees associated with obtaining the professional geoscientist license is $200 to cover the application and first-year license, and $150 per year after the first year.

Ms. Conrad also determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rule will be potentially improved environmental performance by persons regulated by the commission. The proposed rule might impact other state agencies or local governments with staff geologists who need to become licensed under this rule. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rule. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rule. The commission has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is 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 is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined 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, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rule is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The proposed rule is not specifically intended to protect the environment or reduce risks to human health. The proposed rule is intended to establish procedures to require that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists. Therefore, it is not anticipated that the proposed rule will 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 commission concludes that the proposed rule does not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendment is not subject to Texas Government Code, §2001.0225, because it does not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, 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.

In this case, the proposed amendment to Chapter 350 does not meet any of these requirements. First, there are no federal standards that this rule would exceed. Second, the proposed rule does not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by the proposed rule. Fourth, the commission proposes this rule to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not propose the adoption of the rule solely under the commission's general powers.

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

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed a preliminary assessment of whether the proposed rule constitutes a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rule is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The proposed rule would substantially advance this stated purpose by requiring that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists.

Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rule does not affect a landowner's rights in private real property by burdening private real property,

nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rulemaking. The rule simply requires that specific portions of applications or necessary data submitted to the commission be produced, signed, sealed, and dated by a qualified professional individual who has demonstrated his or her qualifications by obtaining a license to engage in the public practice of geoscience from the Texas Board of Professional Geoscientists. The proposed rule does not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the proposed rule changes do not modify or alter standards set forth in existing rules, and do not govern or authorize any actions subject to the CMP. The proposed rulemaking would require a person who prepares and submits geoscientific information to the agency to be a licensed professional geoscientist. The commission invites public comment on the consistency determination of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., June 30, 2003, and should reference Rule Log Number 2001-051G-335-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§350.1. Purpose.

This chapter specifies the information and procedures necessary to demonstrate compliance with the Texas Risk Reduction Program. This program provides a consistent corrective action process directed toward protection of human health and the environment balanced with the economic welfare of the citizens of this state. This program uses a tiered approach incorporating risk assessment techniques to help focus investigations, to determine appropriate protective concentration levels for human health, and when necessary, for ecological receptors. The program also sets reasonable response objectives that will protect human health and the environment and preserve the active and productive use of land.

(1) The provisions of this chapter in no way prohibit actions which should be taken by the person to mitigate emergency situations, to abate an ongoing [~~on-going~~] release, or to stabilize or abate the spread of released chemicals of concern.

(2) All engineering, geoscientific, and surveying information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer, licensed professional geoscientist, or licensed professional surveyor and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act, the Texas Geoscience Practice Act, the Texas Professional Land Surveying Practices Act and the licensing and registration boards under these acts.

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

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303046

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: June 29, 2003

For further information, please call: (512) 239-0348

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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 2. OWNER-BUILDER LOAN PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§2.1 - 2.4

The Texas Department of Housing and Community Affairs (the Department) adopts new §§2.1 - 2.4, without changes, as published in the March 21, 2003, issue of the *Texas Register* (28 TexReg 2439), concerning the Owner-Builder Loan Program.

The sections are adopted in order to provide more affordable housing for the State of Texas.

No comments have been received regarding the adoption of these sections.

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, article or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 14, 2003.

TRD-200303009
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: June 3, 2003
Proposal publication date: March 21, 2003
For further information, please call: (512) 475-3726

SUBCHAPTER B. A NONPROFIT OWNER-BUILDER HOUSING PROGRAM ELIGIBILITY

10 TAC §2.10, §2.11

The Texas Department of Housing and Community Affairs (the Department) adopts new §2.10 and §2.11, without changes, as published in the March 21, 2003, issue of the *Texas Register* (28 TexReg 2440), concerning the Non-Profit Owner-Builder Housing Program.

The sections are adopted in order to provide more affordable housing for the State of Texas.

No comments have been received regarding the adoption of these sections.

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, article or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 14, 2003.

TRD-200303010
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: June 3, 2003
Proposal publication date: March 21, 2003
For further information, please call: (512) 475-3726

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

The Texas Education Agency (TEA) adopts an amendment to §100.1011 and new §§100.1102- 100.1108, concerning open-enrollment charter schools, without changes to the proposed text as published in the March 28, 2003, issue of the *Texas Register* (28 TexReg 2690) and will not be republished. Section 100.1011 specifies provisions relating to definitions. The adopted amendment and new sections relate to charter school board and officer training mandated by House Bill (HB) 6, 77th Texas Legislature, 2001.

Texas Education Code (TEC), §12.123, added by HB 6, 77th Texas Legislature, 2001, requires that the commissioner adopt rules prescribing training for members of charter holder governing bodies, members of charter school governing bodies, and charter school officers. Prior to the passage of HB 6, no training was required for these entities.

The following comments were received regarding adoption of the proposed rule action.

Comment. A member of the governing body of a charter school stated that the requirement that members of the governing body of a charter holder submit to training regarding charter schools is onerous. He asked if the commissioner would reduce the training requirement for the charter holder board to one hour per year. He also requested that trainer qualification requirements be relaxed so that a member of the governing body of a charter school would qualify to train the members of the governing body of a charter holder. Additionally, he proposed that online or self-training be allowed.

Agency Response. The agency disagrees with the comment. The Texas Legislature determined in TEC, §12.123, that governing body members should receive appropriate training in certain subjects listed in statute. These subjects can not be taught meaningfully in one hour. The rules as proposed do not prohibit any person from satisfying the requirements to become an approved course provider. The rules as proposed do not preclude the offering of a training course through multiple media, including computer-based training materials delivered via the Internet, so long as the requirements for documenting successful completion of the course are met. This issue can be addressed via the course provider approval process. Self-training is not appropriate.

Comment. A chief operating officer of a charter holder stated that the training requirements were burdensome to parent members of the governing body of a charter school. In addition, he asked the commissioner to allow online training.

Agency Response. The agency disagrees with the comment. The rules as proposed do not preclude the offering of a training course through multiple media, including computer-based training materials delivered via the Internet, so long as the requirements for documenting successful completion of the course are met. This issue can be addressed via the course provider approval process. Parents, in their capacity as parents, have no training requirements. Should a person who happens to be the parent of a student in a charter school undertake to serve in the capacity of a member of the governing body of the charter holder or charter school, then in that capacity the person must complete the training associated with that position.

DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1011

The amendment is adopted under Texas Education Code, §12.123, which authorizes the commissioner to adopt rules prescribing training for members of charter holder governing bodies, members of charter school governing bodies, and officers of charter schools.

The amendment implements Texas Education Code, §12.123.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200303092
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Effective date: June 8, 2003
Proposal publication date: March 28, 2003
For further information, please call: (512) 463-9701

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DIVISION 5. CHARTER SCHOOL GOVERNANCE

19 TAC §§100.1102 - 100.1108

The new sections are adopted under Texas Education Code, §12.123, which authorizes the commissioner to adopt rules prescribing training for members of charter holder governing bodies, members of charter school governing bodies, and officers of charter schools.

The new sections implement Texas Education Code, §12.123.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200303093
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Effective date: June 8, 2003
Proposal publication date: March 28, 2003
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 513. REGISTRATION

SUBCHAPTER B. REGISTRATION OF CPA FIRMS

22 TAC §513.9

The Texas State Board of Public Accountancy adopts an amendment to §513.9 concerning Application for Firm License without changes to the proposed text as published in the February 7, 2003 issue of the *Texas Register* (28 TexReg 1038). The text of the rule will not be republished.

The amendment establishes that the person who completes the application for firm license is responsible for substantively responding to Board inquiries addressed to the firm.

The amendment will function by making it clear as to who is responsible for responding to Board inquiries.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 15, 2003.

TRD-200303026

Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Effective date: June 4, 2003
Proposal publication date: February 7, 2003
For further information, please call: (512) 305-7848

PART 25. STRUCTURAL PEST CONTROL BOARD

CHAPTER 595. COMPLIANCE AND ENFORCEMENT

22 TAC §595.4

The Structural Pest Control Board adopts amendments to 22 TAC §595.4, concerning Pest Control Use Records, with changes to the proposed text as published in the January 31, 2003, issue of the *Texas Register* (28 TexReg 818).

Justification for the rule will be the clarification that all pesticides/devices used and maintained in the business use records are registered with the Environmental Protection Agency, Texas Department of Agriculture and/or approved by the Structural Pest Control Board.

The rule will function in that all use records maintained by the businesses are maintained as prescribed for more efficient enforcement purposes.

There were no comments received.

There were no groups or associations making comments for or against the rule.

The amendment is adopted under Article 15b-6, Texas Revised Civil Statutes Annotated, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§595.4. Pest Control Use Records.

The business licensee or, in the case of the certified noncommercial applicator, the applicator shall keep and maintain a record of all uses of pesticides and pest control devices registered with the United States Environmental Protection Agency and/or Texas Department of Agriculture and/or approved by the Board under §599.1 of this title for a period of two years. Said records will be kept on the premise of the business licensee or, in the case of a certified noncommercial applicator, the employer's premises. The records will include, but are not limited to, routine operational data, which include name and address of the customer, name of pesticides or devices used, amounts of pesticides or devices used, application of solution or amount of concentrate of pesticides used, purpose for which the pesticides or devices were used or target pest, date the pesticides or devices were used, and the service address where the pesticides and devices were used. If a physical device approved by the Board is used, the square footage of the physical device will be recorded and a diagram describing the installation will be provided. These records shall be made available to the Board or its authorized agents in accordance with the Structural Pest Control Act, as amended.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303070
Dale Burnett
Executive Director
Structural Pest Control Board
Effective date: June 5, 2003
Proposal publication date: January 31, 2003
For further information, please call: (512) 305-8270

22 TAC §595.6

The Structural Pest Control Board adopts amendments to 22 TAC §595.6, concerning Pest Control Sign, without changes to the proposed text as published in the December 13, 2002, issue of the *Texas Register* (27 TexReg 11682).

Justification for the rule is the updating of the pest control industry and the consumer of the address change for the Board.

The rule will function in that both industry and the consumer will be able to contact the Board more readily when it is required.

There were no comments received.

There were no groups or associations making comments for or against the rule.

The amendment is adopted under Article 135b-6, Texas Revised Civil Statutes Annotated, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303064
Dale Burnett
Executive Director
Structural Pest Control Board
Effective date: June 5, 2003
Proposal publication date: December 13, 2002
For further information, please call: (512) 305-8270

22 TAC §595.7

The Structural Pest Control Board adopts amendments to 22 TAC §595.7, concerning Consumer Information Sheet, without changes to the proposed text as published in the December 13, 2002, issue of the *Texas Register* (27 TexReg 11683).

Justification for the rule is the updating of the pest control industry and the consumer of the address change for the Agency.

The rule will function in that industry and the consumer will be able to contact the Board more readily when required.

There were no comments received.

There were no groups or associations making comments for or against the rule.

The amendment is adopted under Article 135b-6, Texas Revised Civil Statutes Annotated, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303065
Dale Burnett
Executive Director
Structural Pest Control Board
Effective date: June 5, 2003
Proposal publication date: December 13, 2002
For further information, please call: (512) 305-8270

22 TAC §595.14

The Structural Pest Control Board adopts amendments to 22 TAC §595.14, concerning Reduced Impact Pest Control Service, without changes to the proposed text as published in the December 13, 2002, issue of the *Texas Register* (27 TexReg 11683).

Justification for the rule is the updating of the industry and the consumer of the change of address for the Board.

The rule will function in that industry and the consumer will be able to contact the Board when required.

There were no comments received.

There were no groups or associations making comments for or against the rule.

The amendment is adopted under Article 135b-6, Texas Revised Civil Statutes Annotated, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303066
Dale Burnett
Executive Director
Structural Pest Control Board
Effective date: June 5, 2003
Proposal publication date: December 13, 2002
For further information, please call: (512) 305-8270

22 TAC §595.15

The Structural Pest Control Board adopts amendments to 22 TAC §595.15, without changes to the proposed text as published in the December 13, 2002, issue of the *Texas Register* (27 TexReg 11684).

Justification for the rule is the updating of the industry and consumer of the change of address for the Board.

The rule will function in that industry and the consumer will be able to contact the Board when required.

There were no comments received.

There were no groups or associations making comments for or against the rule.

The amendment is adopted under Article 135b-6, Texas Revised Civil Statutes Annotated, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303067
Dale Burnett
Executive Director
Structural Pest Control Board
Effective date: June 5, 2003
Proposal publication date: December 13, 2002
For further information, please call: (512) 305-8270

22 TAC §595.17

The Structural Pest Control Board adopts amendments to 22 TAC §595.17, concerning Incidental Use For Schools, without changes to the proposed text as published in the December 13, 2002, issue of the *Texas Register* (27 TexReg 11684).

Justification for the rule is the updating of industry and consumer of the change of address for the Board.

The rule will function in that industry and consumer will be able to contact the Board when required.

There were no comments received.

There were no groups or associations making comments for or against the rule.

The amendment is adopted under Article 135b-6, Texas Revised Civil Statutes Annotated, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303068
Dale Burnett
Executive Director
Structural Pest Control Board
Effective date: June 5, 2003
Proposal publication date: December 13, 2002
For further information, please call: (512) 305-8270

CHAPTER 599. TREATMENT STANDARDS

22 TAC §599.4

The Structural Pest Control Board adopts amendments to 22 TAC §599.4, concerning Termite Treatment Disclosure Documents, without changes to the proposed text as published in the January 31, 2003, issue of the *Texas Register* (28 TexReg 818).

Justification for the rule is the strengthening of disclosure requirements for the better of the pest control industry and the protection of the public at large.

The rule will function in that disclosure of square footage and a diagram is presented to the consumer describing the installation if a physical device is used.

There were no comments received.

There were no groups or associations making comments for or against the rule.

The amendment is adopted under Article 135b-6, Texas Revised Civil Statutes Annotated, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303071
Dale Burnett
Executive Director
Structural Pest Control Board
Effective date: June 5, 2003
Proposal publication date: January 31, 2003
For further information, please call: (512) 305-8270

22 TAC §599.6

The Texas Structural Pest Control Board adopts amendments to 22 TAC §599.6, concerning Real Estate Transaction Inspection Reports, without changes to the proposed text as published in the December 13, 2002, issue of the *Texas Register* (27 TexReg 11685).

Justification for the rule is the updating the industry and consumer of the change of address for the Agency.

The rule will function in that industry and consumer will be able to contact the Board when required.

There were no comments received.

There were no groups of associations making comments for or against the rule.

The amendment is adopted under Article 135b-6, Texas Revised Civil Statutes Annotated, which provides the Structural Pest Control Board with the authority to license and regulate persons who perform wood destroying insect inspections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303069
Dale Burnett
Executive Director
Structural Pest Control Board
Effective date: June 5, 2003
Proposal publication date: December 13, 2002
For further information, please call: (512) 305-8270

TITLE 25. HEALTH SERVICES

PART 11. TEXAS CANCER COUNCIL

CHAPTER 704. TEXANS CONQUER CANCER PROGRAM

25 TAC §§704.1, 704.3, 704.5, 704.7, 704.9, 704.11, 704.13

The Texas Cancer Council adopts the new §§704.1, 704.3, 704.5, 704.7, 704.9, 704.11, 704.13 to Chapter 704, concerning the implementation of the Texans Conquer Cancer Program (TCCP). Sections 704.1, 704.7, and 704.9 are adopted with changes to the proposed text as published in the March 28, 2003, issue of the *Texas Register* (28 TexReg 2699). Sections 704.3, 704.5, 704.11, and 704.13 are adopted without changes to the proposed text as published and will not be republished.

Section 704.1 is adopted to define the Texans Conquer Cancer Advisory Committee and its purpose and tasks, the terms of the committee members, and the guidelines for committee meetings. This section sets the parameters for the committee to do its work.

Section 704.3 is adopted to define the Texas Conquer Cancer Account that exists in the Dedicated General Revenue Fund, what may be deposited into the Account, and how the Council may spend these funds. The requirements of this section are statutory.

Section 704.5 is adopted to define how the Texas Cancer Council will establish guidelines for awarding funds in the Texans Conquer Cancer Account.

Section 704.7 is adopted to describe the format and the content of applications submitted to the Council. This rule explains the proper format and clarifies the considerations and exceptions that are followed when submitting applications. This rule is necessary to assist the committee in carrying out its duties and maintain a consistent approach to accepting proposals.

Section 704.7(d) lists the services that the Council has determined constitute treatment and those that do not constitute treatment. The statute, Health and Safety Code, §102.017(b), prohibits the funds in the account from being used for treatment services. Instead the funds are to be used for support services. The statute does not define treatment or support services. The rules, therefore, apply a common use application of those terms to provide examples of what services constitute treatment and what services are support services. Treatment would consist of the direct medical services provided to a cancer patient. Support services could include services that assist the patient or the patient's family in obtaining or maintaining access by the patient to the medical services the patient needs and services that assist the patient or the patient's family with the financial costs that are associated with the incidental activities required for a family to maintain a cancer patient in treatment.

The lists, although not exhaustive, assist the grant applicant in determining whether their needs would be met by a grant under

this program prior to submitting an application. The lists also provide guidance to the Council in its monitoring function to ensure that grant funds are expended in accordance with the statutory requirements.

This rule also describes the process which the committee follows when reviewing proposals. The rule explains the steps that followed by the committee for their review. These steps ensure a fair, impartial and objective review of each proposal, and ensure that proposals are linked to the goals of the Texas Cancer Plan.

This rule also describes the process that the committee follows when reviewing and making recommendations on projects. Included in this rule are steps identifying the process to be followed after a proposal has been awarded funds.

Section 704.9 is adopted to describe the committee powers when managing the termination process. This rule applies to grantees and describes expiration, notification, and reconsideration of contracts. The rule is necessary to ensure that contractual obligations are met and to protect the Council's interests and the interests of the Texans Conquer Cancer Account when such obligations are not met.

Section 704.11 is adopted to describe confidentiality of records and the guidelines that grantees must follow. This rule is necessary to ensure that these guidelines regarding confidentially are adopted, and that confidentiality is protected at the local level. Grantees often are exposed to confidential information about patients and clients. State and federal laws require that certain health information be kept confidential. These rules apply those confidentiality provisions to the grantees.

Section 704.13 is adopted to ensure that the requirements concerning the submission, approval and cancellation of grants are followed and are consistent among grantees.

No public comments were received regarding the new sections.

The rules are adopted under the authority of the Texas Health and Safety Code Annotated, §102.010 that directs the Council to adopt rules governing the submission and approval of grant requests and the cancellation of grants, and §102.017(c), which directs the Council to establish guidelines for spending the money in the Texans Conquer Cancer Account.

§704.1. Texans Conquer Cancer Advisory Committee.

(a) Advisory Committee

(1) The advisory committee shall be appointed under and governed by this section.

(2) The name of the advisory committee is Texans Conquer Cancer Advisory Committee (TCCAC).

(3) The council is authorized by Health and Safety Code, §102.018 to appoint a seven-member advisory committee.

(b) Purpose. The purpose of the TCCAC is to assist and advise the council regarding the Texans Conquer Cancer program.

(c) Tasks. The TCCAC shall:

(1) assist the council in establishing guidelines for spending money credited to the Texas Conquer Cancer Account (TCCA); and

(2) review and make recommendations to the council on applications submitted to the council for grants funded with money credited to the TCCA.

(d) Terms of TCCAC members

(1) The terms of office for each member shall be four years, with the terms of three or four members expiring on January 31st of each odd-numbered year. The term of office of one group made up of three of the original members expires on January 31, 2007. The term of office of the second group, consisting of the remaining four original members, will expire on January 31, 2009. Thereafter, the terms of the three-member group (Group A) and the terms of the four-member group (Group B) will expire on alternate odd-numbered years, beginning with Group A resulting in a four-year term for each group.

(2) Members serve without compensation and are not entitled to reimbursement for expenses.

(3) If a vacancy occurs, the council shall appoint a person to serve the unexpired portion of that term.

(4) The TCCAC shall select from among its members a presiding officer every odd-numbered year at the first committee meeting held during that calendar year.

(e) Meetings

(1) The TCCAC shall meet no later than 30 days prior to a council board meeting or when directed by the council or Executive Director to conduct TCCAC business.

(2) Members shall attend meetings as scheduled. A TCCAC member who is unable to attend a meeting shall inform the presiding officer prior to the date of the meeting. Meetings may be held via tele-conference.

(3) Meeting arrangements shall be made by the presiding officer in consultation with council staff.

(4) The TCCAC is not a governmental body as defined in the Open Meetings Act; therefore, meetings need not comply with the requirements of the Open Meetings Act.

(5) Four members of the TCCAC shall constitute a quorum.

(6) The TCCAC shall report to council staff and a committee of the council regarding its reviews of applications submitted. The report should include a description of the review process and recommendations for awards. The recommendation shall be determined by a simple majority vote of the TCCAC.

§704.7. Texans Conquer Cancer Grant Awards.

(a) This section governs the submission and review of grant applications, and the award, amendment, and termination of grants.

(b) The intent of these grants is to provide support services to cancer patients and their families.

(c) Funds from the TCCA will be used to award grants to non-profit organizations that provide a range of support services needed by cancer patients and their families.

(d) When the amount of funds in the TCCA becomes substantial, a notification of available funds will be published in the *Texas Register*, and the council will issue a Request For Applications (RFA).

(1) Funds may be used to provide the following allowable services, which include but are not limited to:

(A) Transportation

(B) Childcare

(C) Medical equipment

(D) Consumable supplies for cancer care

(E) Lodging for patients and/or family during active treatment

(F) Medications and equipment required for symptom control

(G) Rent assistance during active treatment

(H) Food assistance during active treatment

(2) Because other resources may cover these costs, funds shall not be used to provide the following disallowable services, which include but are not limited to:

(A) Expenses associated with cancer treatment such as:

(i) Hospitalization

(ii) Surgery

(iii) Outpatient care, including laboratory tests and physician visits

(iv) Chemotherapy

(v) Radiation

(vi) Health insurance deductibles

(B) Operating expenses for the grantee such as utilities, salaries, office equipment, entertainment

(3) Items not listed in this subsection are not necessarily allowable.

(e) Scope. The council will award grants taking into consideration recommendations from the TCCAC.

(f) Application Requirements. Applications that are incomplete, are not in the proper format, or are marked as received by the council after the posted deadline shall be automatically disqualified and shall not be forwarded to the TCCAC for review or recommendation for award.

(g) Application Submission

(1) The grant application must be submitted to the council staff in accordance with instructions contained in the applicable RFA.

(2) Upon receipt, staff will review the proposals for completeness.

(3) All questions regarding submission and review process may be directed to council staff. The council staff shall not answer questions or provide advice to applicants regarding the merits of any application during the application process.

(h) Review Process

(1) Applications will be collected by the council staff and forwarded to the TCCAC. Council staff will be available to the TCCAC to answer questions concerning applicable statutes, council rules, requirements, and procedures.

(2) The TCCAC will review and evaluate each eligible proposal using appropriate selection criteria established in the RFA.

(3) All proposals that the TCCAC reviews will be submitted to a committee of the council for additional technical review.

(4) The TCCAC shall make recommendations to the council committee regarding the applications.

(5) A report from the council committee will be submitted to the full council before a final funding decision is made. The report shall include the TCCAC recommendation, the committee recommendation, and the basis for the committee's recommendation. The council will review the council committee's report at the next scheduled meeting of the council.

(6) Council members may review a proposal in its entirety prior to making a funding decision.

(7) Council approval is based on the requirements identified in the RFA.

(8) The council will set funding caps for all awards.

(i) Approval.

(1) The council staff will notify applicants of the final decision.

(2) If an applicant's proposal is approved by the council, grant money will not be disbursed until the grantee signs a contract with the council.

(3) All council funding decisions are final and are not subject to reconsideration, appeal, or administrative or judicial review.

(j) Reporting. Grantees must submit reports to the council as described in the Guidelines for Awarding Support Services Funds.

§704.9. Termination of Contract with Grantee.

Termination

(1) The council may terminate the contract of any grantee prior to the expiration of the contract term upon finding that the grantee has defaulted or has not substantially performed under the contract. The council shall notify the grantee in writing of its intent to terminate no later than 30 days before the intended termination date. The written notice shall state the reasons for the termination and the procedure for requesting reconsideration.

(2) The grantee shall have the opportunity to request that the council's contract management committee reconsider the proposed termination. The grantee must file a written request for reconsideration with the Executive Director, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711-2097, prior to the termination date; otherwise, the grantee will be deemed to have waived the review, and the contract will be terminated.

(3) During the time between the notice of the proposed termination and the final decision of the council contract management committee, the council may withhold further funding. In the event the contract management committee's decision is favorable to the grantee, the funds shall be promptly distributed to the grantee.

(4) The council hereby delegates to the contract management committee full authority to terminate grant contracts awarded under this chapter for reasons the committee deems appropriate. Any such decision of the council contract management committee shall be final and shall not be subject to reconsideration, appeal, or administrative or judicial review.

(5) The contract shall be subject to automatic termination by the council if the council's funds are reduced or upon mutual agreement of the grantee and the council.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 12, 2003.

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Executive Director
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TITLE 28. INSURANCE

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) adopts amendments to §110.1 of this title, concerning Requirements for Notifying the Commission of Insurance Coverage, without changes to the proposed text published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2880).

As required by the Government Code §2001.033(1), the commission's reasoned justification for this rule is set out in this order which includes the preamble, which in turn includes the rule. This preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and the reasons why the commission disagrees with some of the comments and proposals.

Previously, the commission did not address the use of insurance binders by rule, although they are an accepted part of insurance practice as a precursor to issuing a policy. As a result, carriers did not have a way of notifying the commission that a temporary binder agreement between an employer and carrier providing workers' compensation coverage was in effect. This amendment clarifies the issuance of a binder as constituting workers' compensation coverage and provides that the same rules that apply to canceling a policy apply to canceling a binder.

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 amended section more clearly states how binders are used in the Texas workers' compensation system and clarify the requirements for reporting workers' compensation insurance coverage to the commission.

Adopted §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 the term, "insurance coverage information" as used in the rule. The amendments re-designate the remaining subsections as (c) through (l) accordingly. Amended subsection (e) clarifies that the requirements of that subsection apply to employers who do not have workers' compensation insurance coverage.

Language is added to subsection (h)(2), requiring an insurance carrier to notify the commission if it cancels a binder before it issues a policy. Although no changes were proposed or made to subsection (i), it should be noted that the adopted 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).

Other amendments were made for clarity and for consistency in terminology.

Comments supporting the proposed amendment to §110.1 were received from the Insurance Council of Texas. Comments opposing the proposed amendments to §110.1 were received from the Texas Association of Responsible Nonsubscribers.

Summaries of the comments and commission responses are as follows:

COMMENT: Commenter stated general support of the rule as proposed as it responded to requests from the insurers to have the commission accept the reporting of workers' compensation insurance coverage as represented by binders using the IAIABC POC binder transaction.

RESPONSE: The commission concurs.

COMMENT: Commenter took exception to the statement in the proposal preamble that the proposed changes benefit all system participants in providing more complete and accurate information regarding the existence of workers' compensation coverage for Texas employers. Commenter did not believe that the proposed changes would benefit nonsubscribing employers.

RESPONSE: The commission disagrees. The amendment does benefit system participants in the way described. Nonsubscribing employers have opted out of the workers' compensation system and are not considered system participants.

COMMENT: Commenter disagreed that the proposed amendment either improves clarity or consistency as it relates to coverage reports provided by nonsubscribing employers, and specifically found that the terminology of "insurance coverage information" in §110.1(e) would be confusing to nonsubscribing employers since many nonsubscribing employers provide various other types of insurance.

RESPONSE: The commission disagrees. The amendments to §110.1(a) clarify the effect of a workers' compensation insurance binder. This clarification is helpful to those who need to confirm workers' compensation coverage. In addition, new subsection (b) defines "insurance coverage information" as information regarding whether or not an employer has workers' compensation insurance coverage and subsection (e) clearly states that it is applicable to employers who do not have workers' compensation insurance coverage. Therefore, this information should not cause confusion regarding other types of insurance coverage.

The amendments are adopted pursuant to 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.

The amendments are adopted pursuant to Texas Labor Code §§401.024, 402.042, 402.061, Chapter 406, Subchapter A, including, §§406.006, 406.008, and 406.009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 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

CHAPTER 124. CARRIERS: REQUIRED NOTICES AND MODE OF PAYMENT

28 TAC §124.2

The Texas Workers' Compensation Commission (the commission) adopts amendments to §124.2, concerning Carrier Reporting and Notification Requirements, with changes to the proposed text published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2882).

As required by the Government Code §2001.033(1), the commission's reasoned justification for this rule is set out in this order, which includes the preamble, which in turn includes the rule. This preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and the reasons why the commission disagrees with some of the comments and proposals.

Changes made to the proposed rule are in response to public comment received in writing and are described in the summary of comments and responses section of this preamble.

Changes in the proposed text are found in §124.2(c)(1) and §124.2(n).

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 amends §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) has been amended 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 amended 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 emphasizes 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 verification, 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. New §124.2(n) requires each insurance carrier to provide to the commission, through its Austin representative, the contact information for all workers' compensation claim service administration functions performed by the insurance carrier either directly or through third parties. The insurance carrier may provide this information either by creating and maintaining a single World Wide Web (Web) page containing this information and furnishing the Uniform Resource Locator (URL) of that Web page to the commission through its Austin representative or by having the Austin representative make an online submission of the contact information that the commission will make available to the public. This second option represents a change from the rule as proposed, which only provided the Web page option.

The commission envisions that the input of the URL or contact information will be performed by the carrier's Austin representative through their ability to log onto the commission's new information system (TXCOMP) and update specific information on the carrier's data record. Having the information provided as data

greatly enhances the commission's ability to use the information and make it available to the other workers' compensation system participants. Use of the Web page option will allow a carrier significant flexibility in how the required information is organized and presented. While the functional areas specified in the proposed amendment must be addressed, the contact points may be grouped if that best suits the carrier's business model. If the carrier chooses, it may provide a single point of contact that can either provide the information required or direct the requester to the appropriate source.

Amended §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.

Amended §124.2(c)(4) requires that the coverage information required by §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.

New §124.2(n) states the requirement for each insurance carrier to provide to the commission, 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. Telephone and facsimile numbers, mailing address, and company and/or department e-mail address information for each function shall be provided. Communications and staffing provided by the carrier in response to this subsection shall conform to the requirements of §102.4 of this title (regarding, General Rules for Non-Commission Communications). Each insurance carrier will provide to the commission, through its Austin representative, the contact information for these functions either by creating and maintaining a single World Wide Web (Web) page containing this information and furnishing the Uniform Resource Locator (URL) of that Web page to the commission through its Austin representative or by having the Austin representative make an online submission of the contact information that the commission will make available to the public. It is anticipated that an insurance carrier's Austin representative will provide the URL for its Web page or submit the contact information to the commission through their access to the commission's automation system (TXCOMP).

Comments generally supporting the proposed amendments were received from Texas Mutual Insurance Company. Comments generally opposing the proposed amendments were received from Alliance of American Insurers, American Insurance Association, and The St. Paul Companies, Inc. Comments generally supporting some of the proposed amendments and generally opposing others were received from Insurance Council of Texas.

In addition to supporting or opposing various portions of the rule, commenters made suggestions for improvements to the rules or asked for clarification on certain points. Such comments containing recommendations were received from the following groups: The St. Paul Companies, Inc., Texas Mutual Insurance Company, Alliance of American Insurers, Insurance Council of Texas and American Insurance Association.

Summaries of the comments and commission responses are as follows:

Section 124.2(c)(1)

COMMENT: Commenter supported the proposed amendment of subsection (c)(1) of §124.2.

RESPONSE: The commission concurs.

COMMENT: Commenter did not object to the data reporting requirements in amended subsection (c)(1), but found the proposed language confusing and suggested that the language be modified to clarify that the policy information to be reported was that of the insured not the insurance company.

RESPONSE: The commission agrees that the proposed language would be improved by differentiating between the FEIN, associated with the carrier, and the policy number, policy effective date and policy expiration date associated with the insured employer. Subsection (c)(1) has been changed to clarify this distinction.

COMMENT: Commenter objected to the requirement that a carrier report the carrier FEIN, policy number, policy effective date and policy expiration date on the first report of injury and further objected to the requirement to report the carrier FEIN, characterizing this as a new burden being placed on the carrier, as this information is already provided through the coverage reporting system. Commenter felt that this requirement would not improve the benefit delivery system in any manner. The commenter recommended deletion of the first report of injury data elements from the final rule.

RESPONSE: The commission disagrees. No new information is required to be reported by this rule change. The commission already requires reporting of the carrier's FEIN and the policy information in the first report of injury under the current rule. As discussed earlier in this preamble, only on 58 percent of the first reports of injury received by the commission does the policy number match with a policy number on coverage information provided by the carrier pursuant to §110.1 of this title (regarding Requirements for Notifying the Commission of Insurance Coverage). This amendment simply requires consistency of reporting information between the first report of injury and the coverage information required under §110.1. This consistency of reporting will enable the commission to more efficiently link claims information and coverage information, thereby facilitating better and more efficient customer service by the commission to all system participants

COMMENT: Commenter requested clarification as to whether or not omission of the specified data elements would cause the First Report of Injury to be rejected.

RESPONSE: The carrier FEIN is, and has been for many years, a mandatory data element. Its omission causes the First Report of Injury to be rejected. The policy number, policy effective date and policy expiration date are not mandatory fields and their omission does not cause the First Report of Injury to be rejected.

Section 124.2(n)

COMMENT: The commenter stated that the concept of the commission providing insurance company contact information to system participants was a good idea, although they disagreed with the manner in which the commission proposed to make the information available.

RESPONSE: The commission agrees that improvement of the exchange of claim administration contact information is needed and has provided some new ways to facilitate that exchange. The concerns expressed by the commenter are addressed in responses which follow.

COMMENT: Commenters challenged the commission's statutory authority to require a carrier to create a claims handling contact Web page.

RESPONSE: Section 406.006 of the Texas Labor Code requires insurance carriers to file notice of coverage and claim administration contact information with the commission and authorized the commission to adopt rules that establish the specific information required. Section 406.010 of the Texas Labor Code authorizes the commission by rule to specify the requirements for insurance carrier designation of persons to provide claims service. Section 401.024 of the Texas Labor Code provides that the commission may by rule require the use of an electronic transmission for specified information. "Electronic transmission" means the transmission of information by facsimile, electronic mail, electronic data interchange, or any other similar method. The use of an Internet-based electronic transmission via a Web page is a similar method to the methods listed. Electronic mail is similarly Internet based. Although the commission has the authority to require the use of a Web page as a method of providing claim administration contact information, the amended rule also establishes a method of providing this information without developing a Web page.

COMMENT: Commenter believes the proposed amendments are unnecessary and questioned the need for a specified method of providing carrier claim administrative contact information, contending that the information was available from other numerous, readily available sources such as toll free telephone numbers, general websites, telephone directories, and from the employer.

RESPONSE: The commission disagrees. The commission receives approximately 500 telephone calls per day from workers' compensation system participants, predominately health care providers, requesting contact information for the carrier. The commission does not have this information available in an organized, automated form and has depended on individual customer service employees having personal reference lists. After the commission implemented its online coverage look-up system on the state Web portal (TexasOnline), over sixty percent of the comments received from users of that system asked for the addition of the carrier contact information. This amendment will support the commission's implementation of an enhanced version of the online coverage system that will provide the claim administration contact information.

COMMENT: Commenters contended that developing and maintaining a Web page would add significant cost for the carrier that would be passed on to the employer as higher premiums.

RESPONSE: The commission disagrees. The Web page necessary to convey the claim administration contact information requires a simple, content only page with no functionality. Development and maintenance costs should be minimal. However, to address the concerns of the commenters, the commission has added an optional method of providing the claim administration contact information that, while not offering the flexibility of the Web page option, will be at no cost to the carrier.

COMMENT: Commenter recommended changing the language in §124.2(n)(1)(A) to read "Policy issuance and effective dates of policy", and expressed concern that the term, "Coverage verification questions," would raise the possibility that the contact person is to make determinations regarding the compensability of the claim.

RESPONSE: The Commission agrees and has added the language suggested by the commenter as a parenthetical explanation of the term, "coverage verification." Also, for clarity, the word "questions" was omitted from §124.2(n)(1)(A).

COMMENT: Commenter recommended a 12-month phase-in period for the requirements of §124.2(n).

RESPONSE: The commission agrees that some phase-in period is appropriate, however disagrees that the period should be 12 months. The commission has adopted the amendments with an effective date of November 1, 2003. This will allow carriers a sufficient time to prepare to meet the requirements.

COMMENT: Commenter expressed concern that the organizational layout and contact information would provide insight on how a carrier conducts business, delivers services and which providers it uses for those services. The commenter stated that this information was an asset that the carrier guarded because it differentiates one carrier from another.

RESPONSE: The commission agrees in part. The provider information is not an issue with all carriers because many of them provide these services in-house or through well-known associations. However, to address these concerns for other carriers, the organizational layout information has been removed because this information may reflect the insurance carrier's business practices.

COMMENT: Commenter stated that no other state has such a requirement.

RESPONSE: The commission is not reluctant to be a leader in providing what is clearly a much-needed service to a large portion of the Texas workers' compensation community. The need for improved communication of this contact information is clear and the commission believes that the addition of the no cost method of submitting the information, added in response to carrier concerns is an innovation other states may want to consider.

COMMENT: Commenter expressed concern that this initiative by Texas might lead to similar requirements by other states, resulting in a carrier having to maintain multiple Web pages to meet each state's requirements. Another commenter suggested that the rule specifically state that carriers do not need to provide electronic information on a country-wide basis.

RESPONSE: The commission disagrees. The adopted amendments respond to a specific need of the Texas workers' compensation system. Claim administration contact information necessary for claims in the Texas workers' compensation system is all that is addressed by this rule. In the United States, workers' compensation is a state program and state requirements inherently differ. The alternative process now provided by the current proposal should minimize the financial impact on the carrier by providing a no cost method of complying without being required to develop and maintain a Web page.

COMMENT: Commenter expressed a concern that the system proposed in the amended rule would expose confidential claim information to compromise.

RESPONSE: The commission disagrees. There is no claim-specific information required to be provided and no security exposure beyond that a carrier may have through its own Web based systems.

COMMENT: Commenter expressed concern that insurance carrier employee personal information would be accessible through

the system, possibly exposing these employees to unwarranted or threatening contacts.

RESPONSE: The commission disagrees. There is no requirement in the adopted amendment that the contact information contain personal employee information. No individual names are required. Telephone numbers and e-mail addresses should be functional rather than personal.

COMMENT: Commenter provided general opposition to the rule as it might delay service to the injured worker or health care provider if multiple calls were required or the claim had not previously been reported. The commenter also felt that the proposed amendment could be interpreted to require a very complex organizational structure that, in the extreme, could extend down to policy specific information. Commenter recommended that the carrier be allowed to provide a point of contact in the carrier's claim department that could either directly respond to the inquiry or properly direct the caller to someone who could help them and proposed modified language that allowed for a single point of contact.

RESPONSE: The commission agrees that a single point of contact may be preferable, depending on the carrier's organizational structure and method of handling the various claim service administrative functions. The language of the rule has been modified in subsection (n)(1) accordingly to remove the direction on how the information should be organized, thus allowing the carrier flexibility in how this will be done. While contact points for the five functions listed in the proposed amendment are required, if the carrier wishes, all five, or any combination of functions, could be referred to a single contact.

COMMENT: Commenter felt that the five-day requirement to update the contact information, found in subsection (n)(3), was unreasonable and should be extended to twenty calendar days.

RESPONSE: The commission agrees that the five-day requirement proposed may not provide enough time to update contact information. However, the claim administration contact information is useless if it is not current and correct. The proposed rule has been modified to require that the claim administration contact information or URL address be updated within ten working days of a change. The term, "business day," is changed to "working day" for consistency with §102.3(b) of this title (regarding Computation of Time).

COMMENT: Commenter supported the commission's proposed flexibility in the organization of the contact information page and recommended the addition of a §124.2(n)(1)(F) to read: "Other administrative functions reflecting an insurance carrier's business practices." The commenter recommended that the carrier be allowed to include other contact information on the contact page for use by other insurance functions such as insurance agents to check on the status of a quote and policyholders to call regarding their premium audit.

RESPONSE: The commission disagrees that this text should be added. The rule states the required information that the carrier must make available. While the carrier is not prohibited from providing additional contact information on the contact page, the required information must be prominently presented. The focus of the page is to provide contact information for claim administration functions as regulated by the commission.

COMMENT: Commenter suggested as an alternative to the commission's proposed Web page method of providing the claim administration contact information that the commission require each carrier to submit their contact information to the commission as a MS Word document which the commission would compile into a directory, convert to a single Adobe PDF file and make available for download from the commission's Web site.

RESPONSE: The commission disagrees. The commenter's suggested method would require commission action to request the information and to request updates. This would delay the dissemination of the information. Requiring the entity that has the information readily available and knows when it changes enter it directly creates a much more efficient and accurate system.

COMMENT: Commenter requested clarification as to whether the required contact information only applied to contacts concerning Texas workers' compensation claims.

RESPONSE: The commenter's understanding is correct that the requirement only requires contact information regarding entities that handle Texas workers' compensation coverage or claims.

COMMENT: Commenter requested clarification as to whether or not the commission would require the contact information page to be accessible from the carrier's Web site in addition to the commission's Web site.

RESPONSE: The commission intends to make the carrier's contact Web page accessible through the commission's Web site. The carrier is not required to make this same Web page accessible through their own Web site, although the commission would encourage the carrier to provide complete claim service procedure and contact information available to all workers' compensation participants through the broadly accessible medium of the Web.

The amendments are adopted pursuant to the Texas Labor Code §401.011(27), which defines an insurance carrier; Texas Labor Code §401.024, which authorizes the commission to require by rule the use of an electronic transmission of information; 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; Texas Labor Code §406.010, which requires insurance carriers to provide claims service and to designate sufficient numbers of persons to provide claims service and requires the commission by rule to specify the requirements for such designation; and Texas Labor Code, §409.005, which requires the insurance carrier to file the report of injury on behalf of the policyholder.

The amendments are adopted pursuant to the Texas Labor Code, §§401.011(27), 401.024, 402.061, 406.006, 406.010, and 409.005.

§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; the insurance carrier's Federal Employer Identification Number (FEIN); and the 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 paragraph (1) of this subsection if not available when the First Report of Injury was submitted to the commission 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) On or after November 1, 2003, each insurance carrier shall provide to the commission, through its Austin representative in the form and manner prescribed by the commission, 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 e-mail address as appropriate. This contact information may be provided either in the form of a single World Wide Web (Web) Uniform Resource Locator (URL) for a Web page created and maintained by the carrier that contains the required information or through an online submission to the commission.

(A) Coverage verification (policy issuance and effective dates of policy);

(B) Claim adjustment;

(C) Medical billing;

(D) Pharmacy billing (if different from medical billing); and

(E) Preauthorization.

(2) If the Web page option is used the page shall contain the date on which it was last updated and an e-mail address or other contact information to which a user may report problems or inaccuracies.

(3) The insurance carrier shall update the contact information and/or Web URL within ten working days after any such change is made.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 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

28 TAC §124.7

The Texas Workers' Compensation Commission (the commission) adopts an amendment to §124.7, concerning Initial Payment of Temporary Income Benefits, without changes to the proposed text published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2245).

As required by the Government Code §2001.033(1), the commission's reasoned justification for this rule is set out in this order, which includes the preamble, which in turn includes the rule. This preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and, if applicable, the reasons why the commission disagrees with any comment or proposal.

No changes were made to the rule as proposed.

Section 124.6 was repealed as part of an earlier rule action which adopted §124.2 (Carrier Reporting and Notification Requirements) and §124.3 (Investigation of an Injury and Notice of Denial/Dispute). As a result, the reference to §124.6 contained in §124.7(c) is inaccurate. This amendment removes that incorrect reference.

Comments supporting the proposed amendment were received from the Insurance Council of Texas.

Summaries of the comments and commission responses are as follows:

COMMENT: Commenter stated that the deletion of a reference to a rule that has been repealed will prevent system participants from becoming confused about the applicability of the repealed rule. The commenter supports the commission's efforts to "clean up" rules by deleting language and rule references that are no longer applicable or relevant.

RESPONSE: The commission agrees.

The amendment is adopted pursuant to the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the statute as well as 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, §406.010, which authorizes the commission to adopt rules regarding claims service; Texas Labor Code, §408.027, which sets out the timeframe and procedures for payment of medical bills; Texas Labor Code, §408.081, which provides that, except as otherwise provided, benefits are to be paid weekly as and when they accrue; Texas Labor Code, §408.082 and §408.101, which define the accrual date for benefits; Texas Labor Code, §409.021, which requires carriers to timely initiate or dispute compensation; and

Texas Labor Code, §409.022, which requires a notice of refusal to specify the carrier's grounds for disputing a claim.

The amendment is adopted pursuant to the Texas Labor Code, §§401.024, 402.042, 402.061, 406.010, 408.027, 408.081, 408.082,408.101, 409.021, and 409.022.

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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Susan Cory
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CHAPTER 126. GENERAL PROVISIONS APPLICABLE TO ALL BENEFITS

28 TAC §126.11

The Texas Workers' Compensation Commission (the commission) adopts amendments to §126.11, concerning the Extension of the Date of Maximum Medical Improvement for Spinal Surgery without changes to the proposed text published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2885).

As required by the Government Code §2001.033(1), the commission's reasoned justification for this rule is set out in this order which includes the preamble, which in turn includes the rule. This preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and the reasons why the commission disagrees with some of the comments and proposals.

No changes were made to the proposed rule in response to public comment received in writing and no public hearing was requested or held.

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 instead establish carrier liability for medical costs related to non-emergency spinal surgery through the preauthorization process 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 statutory revision is applicable only to health care services requested or provided on or after the effective date of rules adopted by the commission. This necessitated a transitory period during which pending requests continued to be processed under the second opinion process of §133.206 and new requests were handled under the preauthorization process in. Following the 2001 Legislative session, the commission amended §133.206 to reflect that it applied only to health care provided or requested prior to January 1, 2002. All of those requests have been finalized and therefore, §133.206 is no longer needed and has been repealed.

Amended §126.11 replaces 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 the reference to §134.1001 (relating to the Spine Treatment Guideline), abolished effective January 1, 2002 by House Bill 2600, 77th Texas Legislature.

Adopted 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.

Amended subsection (f)(3) deletes the reference to §134.1001 (the abolished Spine Treatment Guideline).

Amended subsection (j) replaces the language of "concurrence finding" with "preauthorized approval."

Comments supporting the proposed amendment to §126.11 were received from the Insurance Council of Texas.

A summary of the comment and commission response is as follows:

COMMENT: Commenter expressed support of the amendment to §126.11 as a necessary "rule clean-up" to avoid confusion and misinformation.

RESPONSE: The commission agrees.

The amendment is adopted pursuant to 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.

The amendment is adopted pursuant to the Texas Labor Code, §§402.061, 402.072, 408.022, 408.026, Chapter 410, §§413.014, 413.031, 415.034, and the Texas Government Code, §2003.021(c).

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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Susan Cory

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Texas Workers' Compensation Commission

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For further information, please call: (512) 804-4287

CHAPTER 133. GENERAL MEDICAL PROVISIONS

The Texas Workers' Compensation Commission (the commission) adopts 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 133.2 is adopted with a minor change to the proposed text as published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2888). Section 133.206 is adopted without changes to the proposal and will not be republished.

As required by the Government Code §2001.033(1), the commission's reasoned justification for this rule is set out in this order, which includes the preamble, which in turn includes the rule. This preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and the reasons why the commission disagrees with some of the comments and proposals.

No changes were made to the proposed rule in response to public comment received in writing and no public hearing was requested or held. One change was made to §133.2(a) as proposed as a result of staff review.

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 instead establish carrier liability for medical costs related to non-emergency spinal surgery through the preauthorization process 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.

Adopted amendments to §133.2(a) remove language that referenced a doctor "performing a second opinion on spinal surgery" to reflect the changes in the Act regarding Spinal Surgery approval procedure and 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. In addition, the word "and" has been changed to "or" to clarify that the treating doctor is required to forward medical records to the appropriate doctor per the request.

The repeal of §133.206 reflects the statutory deletion of the spinal surgery second opinion process from the Texas workers' compensation system. The statutory revision is applicable only to health care services requested or provided on or after the effective date of rules adopted by the commission. This necessitated a transitory period during which pending requests continued to be processed under the second opinion process of §133.206 and new requests were handled under the preauthorization process in. Following the 2001 Legislative session, the commission amended §133.206 to reflect that it applied only to health care provided or requested prior to January 1, 2002. All of those requests have been finalized and therefore, §133.206 is no longer needed and has been repealed.

Comments supporting in part and opposing in part the proposed amendment to §133.2 and supporting the repeal of §133.206 were received from the Insurance Council of Texas.

Summaries of the comments and commission responses are as follows:

COMMENT: Commenter expressed support for the repeal of §133.206.

RESPONSE: The commission agrees.

COMMENT: Commenter agreed with the proposed removal of language in §133.2 concerning a doctor providing a second opinion for spinal surgery.

RESPONSE: The commission agrees.

COMMENT: Commenter expressed concern that the amendment of §133.2 could make it difficult for insurers to receive the information they need to make informed decisions regarding preauthorization and to deny unnecessary spinal surgeries, as well as to perform meaningful preauthorization peer reviews. Commenter recommended the addition of language to §133.2 to allow the insurer or insurer's utilization review company performing preauthorization and concurrent review to receive a full set of records, including radiographic and other diagnostic films, from the treating doctor within 10 days of the date the treating doctor receives the written request from the insurer or insurer's utilization review agent.

RESPONSE: The commission disagrees with the proposed language inclusion in §133.2. Because there is no longer a second opinion process for spinal surgery, the suggested addition to the preauthorization process is appropriately considered in the context of §134.600, Preauthorization, Concurrent Review and Voluntary Certification of Health Care, rather than in §133.2 or §133.206 which are the subject of this rule action.

The amendment is adopted pursuant to 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.

SUBCHAPTER A. GENERAL RULES FOR REQUIRED REPORTS

28 TAC §133.2

The amendment is adopted pursuant to the Texas Labor Code, §402.061, §402.072, §408.022, §408.026, Chapter 410, §413.014 §413.031, §415.034, and the Texas Government Code, §2003.021(c).

§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, or 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 adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan Cory
General Counsel
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SUBCHAPTER C. SECOND OPINION FOR SPINAL SURGERY

28 TAC §133.206

The repeal is adopted pursuant to 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.

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 165. REJECTED RISK: INJURY PREVENTION SERVICES

28 TAC §165.6

The Texas Workers' Compensation Commission (the commission) adopts an amendment to §165.6, concerning the Follow-up Inspection of the Policyholder's Premises by the Division without changes to the proposed text published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2890) and will not be republished. The amendment corrects the reference to an article of the Texas Insurance Code.

As required by the Government Code, §2001.033(1), the commission's reasoned justification for this rule is set out in this order which includes the preamble, which in turn includes the rule. This preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and the reasons why the commission disagrees with some of the comments and proposals.

No changes were made to the rule as proposed in response to public comment received in writing and no public hearing was requested or held.

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, §10(d) as the article requiring policyholders to obtain a safety consultation. The article cited should be Article 5.76-3, §8(c). This amendment removes the inaccurate reference and replaces it with the proper one.

Comments supporting the proposed amendment to §165.6 were received from the Insurance Council of Texas.

A summary of the comment and commission response is as follows:

COMMENT: Commenter expressed support of the amendment to §165.6 as a necessary "rule clean-up" to avoid confusion and misinformation.

RESPONSE: The commission agrees.

The amendment is adopted pursuant to 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.

The amendment is adopted pursuant to Texas Labor Code, §402.061, Texas Labor Code, Chapter 415, and Texas Insurance Code, §5.76-3.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303044
Susan Cory
General Counsel
Texas Workers' Compensation Commission
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CHAPTER 180. MONITORING AND ENFORCEMENT
SUBCHAPTER B. MEDICAL BENEFIT REGULATION

28 TAC §§180.20, 180.21, 180.23

The Texas Workers' Compensation Commission (the commission) adopts amendments to §180.20 (Commission Approved Doctor List), §180.21 (Commission Designated Doctor List), and §180.23 (Commission Required Training for Doctors/Certificate of Registration Levels) with changes to the proposed text published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2274).

As required by the Government Code §2001.033(1), the commission's reasoned justification for this rule is set out in this order, which includes the preamble, which in turn includes the rule. This preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and the reasons why the commission disagrees with some of the comments and proposals.

The *Texas Register* published text shows the adopted language and should be read to determine all revisions. The commission held a Public Hearing on April 11, 2003 regarding the proposed changes, and no comments were provided at that time. Changes made to the proposed rules are in response to public comment received in writing and are described herein, including those based upon further review by staff, including the Medical Advisor and recommendations of the Medical Advisor regarding these rules. Other changes were made to clarify intent, to better match statutory provisions, to improve consistency and to correct typographical or grammatical errors. Changes in the proposed text are found in §180.20 (h)(3) and (4), (k), and §180.23(c)(1)(B) and (D), (h)(4), and (i) and are described in the overview of the rules and the responses to the public comments.

These amendments have been made to address various issues that have arisen with respect to rules adopted or amended in

February 2002 regarding the commission's statutory Approved Doctor List (ADL). House Bill 2600 (HB-2600), enacted by the 77th Texas Legislature in its 2001 session, made numerous amendments to the Texas Workers' Compensation Act (Act). Many of those changes related to regulating medical benefit delivery by: changing the commission's approved doctor list (ADL) and application process (including mandated training); changing the grounds under which the commission can issue sanctions (as well as expanding the sanctions); adding a Medical Advisor to the commission staff and a Medical Quality Review Panel (MQRP); and providing for expanded financial disclosure and prohibiting inappropriate referral fees, kickbacks, or other financial incentives. The February 2002 rule amendments and additions to Chapter 180 were based upon these legislative changes.

HB-2600 mandated that the commission develop a list of doctors who are licensed in this state and approved to provide health care under the Act. HB-2600 also required the commission to establish by rule requirements regarding application and registration, training, and impairment rating testing. HB-2600 mandated that doctors who provide health care services in the Texas workers' compensation system be approved by the commission. In the past, only treating doctors were required to be on the ADL. As of September 1, 2003, the requirement to be approved by the commission will apply to doctors who provide health care services as treating doctors, referral doctors, consulting doctors, required medical examination doctors, peer review doctors, utilization review doctors, designated doctors, and doctors on the MQRP.

HB-2600 also mandated that the commission set up modified training and registration requirements for certain types of doctors such as those who infrequently provide care in the Texas workers' compensation system or those who only perform peer reviews and utilization review. Doctors from other states are permitted to be on the ADL. However, out of state doctors who review health care services (such as through utilization review or peer reviews) are required to be supervised by a doctor licensed in Texas.

To help evaluate behavior of doctors and carriers (as relates to medical benefit delivery), HB-2600 created an official Medical Advisor position that is imbued with specific authority and responsibilities. Also created was the MQRP which functions to assist the Medical Advisor in reviewing the conduct of doctors and carriers relating to medical benefit delivery.

It is these mandates that were the primary motivation for the February 2002 action which adopted eight new rules: §180.20 (relating to Commission Approved Doctor List); §180.21 (relating to Commission Designated Doctor List); §180.22 (relating to Health Care Provider Roles and Responsibilities); §180.23 (relating to Commission Required Training for Doctors/Certification Levels); §180.24 (relating to Financial Disclosure); §180.25 (relating to Improper Inducements, Influence and Threats); §180.26 (relating to Doctor and Insurance Carrier Sanctions); and §180.27 (relating to Sanctions Process/Appeals/Restoration/Reinstatement).

The February 2002 rule revisions and additions were necessary to implement the HB-2600 statutory revisions. These revisions and additions were sweeping in content and established a new process for applying for and obtaining approval to be on the ADL. HB-2600 also required the commission to set a date (not to exceed 18 months from the date of adoption) after which doctors must comply with the new registration and training requirements imposed by the rules. The time lag was intended to provide doctors a reasonable period to comply with the new ADL registration and training requirements. To assist doctors with the transition, the commission has instituted several methods to provide education regarding the new requirements.

Announcements have been published in various medical publications, notices sent to email distribution lists, information has been posted on the commission website and within monthly project newsletters, and a notification campaign has begun by mail that will reach thousands of doctors throughout the summer. The date for doctors to comply with the new requirements was set as September 1, 2003. In the intervening months, the commission has actively worked toward that date. Much groundwork had to be laid so the commission would be able to conduct meaningful evaluations of ADL applicants. For instance, the commission has worked with the various state agencies that license and regulate doctors so the ADL evaluation will include affirmation that the applicant has an active license to practice, and an assessment of any sanction, conditions, or restrictions placed on the license by the licensing board. In addition, the commission and the Research and Oversight Council (ROC) have dedicated time and resources to reviewing the commission's existing medical billing database and developing programs that enable the commission to use the database to identify statistical outliers among the health care providers that provide treatments and services and are reimbursed within the workers' compensation system. The commission Medical Advisor has worked diligently to establish a panel of qualified health care providers that constitute the MQRP and to establish a process for identifying doctors whose health care patterns should be reviewed. A mechanism for that comprehensive review and recommendations from the MQRP and the Medical Advisor have been developed regarding admission to and removal from the ADL and other sanctions authorized by the Act and commission Rules. The commission has written training manuals and modules for online training, secured vendors to provide the participatory training required for impairment testing and ratings, created the ability to file an ADL application online, and developed the means by which all system participants may check the ADL status of a doctor online. Additionally, the commission has developed a method to provide insurance carriers with a downloadable data file of current ADL providers so that carriers can implement automated processes for integrating their medical bill review audits with the validation of a doctor's current ADL status.

These amendments reaffirm the previously adopted Chapter 180 rules, which prevent doctors who do not apply to be on the ADL as of September 1, 2003 from performing services or receiving reimbursement in the Texas workers' compensation system. Because of the 18-month time lag between adoption of the rules and the effective date of the requirement to apply to be on the ADL, and because of the large amount of work that was necessary for the transition, these amendments to the previously adopted Chapter 180 rules focus on sufficient access to health care for injured employees and evaluation of health care or income benefit eligibility for carriers as required by §408.023(i) of the Act. The amendments address three major issues in the transition to the new ADL.

While the commission has the necessary processes in place for the online submission and review of doctor applications, processing the estimated 25,000 to 30,000 ADL applications by

September 1, 2003 may strain the time and resources of commission staff. The new ADL requirements for registration, training, evaluation, and a meaningful review for quality care can be time consuming. HB-2600, by necessary implication, argues against indiscriminate placement of doctors on the ADL without a meaningful review for quality care. However, it is essential to have a sufficient number of doctors available to provide services to injured employees.

The commission is addressing this potential impact on access to care by exercising its statutory authority under §408.023(i) of the Act to grant exceptions to the requirement to be on the ADL. Amendments to §180.20(e) provide that the commission may provide a temporary exception to the requirement to be on the ADL while the doctor's application review is completed. A temporary exception will allow a doctor to be reimbursed in accordance with the Act and Rules. The doctor must have successfully completed the training, application, and financial disclosure required of all applicants. A temporary exception does not constitute "being on the ADL," "approval to be on the ADL," or "denial to be on the ADL." Further amendments to §180.20(h)(2) provide that a temporary exception to the requirement that a doctor be on the ADL allows a doctor to be reimbursed in accordance with the Act and Rules, for directly or indirectly providing reasonable and necessary health care (other than emergency or immediate post-injury medical care) or other medical services (such as peer reviews, utilization reviews, reviews by independent review organizations, or other evaluations).

A second issue was whether the contents and length of the training required could discourage a doctor whose practice does not, by its very nature, include ongoing medical management of injured employees from seeking admission to the ADL. If this proved to be true for a significant number of these doctors, access to some services could be adversely affected. The commission Medical Advisor and staff identified the types of medical practices in this category: Anesthesiology - surgical only (excludes pain management), Pathology, and Radiology.

Section 408.023 of the Act requires the commission to establish reasonable training requirements for doctors and health care providers financially connected to those doctors. The Act and existing commission rules recognize that not all doctors need to have the same level of training. The rules amended and adopted to be effective March 14, 2002 established two levels of training and certification. A Level 1 Certificate of Registration allows a doctor to infrequently provide health care to injured employees, perform utilization review or peer review functions; and/or participate in a regional network established under §408.0221 of the Act. Application for a Level 1 Certificate of Registration requires completion of the Limited Participation Doctor Training Module and requires reapplication and follow-up training every two years. A Level 2 Certificate of Registration allows a doctor to serve a more expanded role in the Texas workers' compensation system. Level 2 Certification requires completing the Doctor Training Module and requires reapplication and follow-up training every four years. Level 2 training qualifies a doctor to become a designated doctor with additional training. Authorization to certify MMI when there is permanent impairment and assign an impairment rating is now separate from the doctor's Level 1 or Level 2 Certificate of Registration and requires the doctor to become authorized as an Impairment Rating Doctor (IR Doctor). IR Doctor authorization requires a Level 1 or 2 ADL Certificate of Registration (or a temporary exception) with successful completion of the Impairment Rating Training Module, a passing score on the Impairment Rating Skills Examination, and reapplication and follow-up training every four years. This authorization is optional; however, doctors who choose not to seek authorization as IR Doctors are not permitted to certify MMI or assign an impairment rating in cases where the employee has permanent impairment as a result of the compensable injury.

To ensure that there are a sufficient number of doctors to perform functions that do not include ongoing medical management of injured employees, the rules allow these doctors to complete the shorter, relevant training within the online application itself. There is now a third level of training. This allows these doctors to take training relevant to their role and immediately continue with the online application process. However, if the doctor with one of the above identified medical practices provides ongoing medical management of injured employees, that doctor will be required to take either the Doctor Training Module or the Limited Participation Doctor Training Module. As an example, an anesthesiologist who provides pain management treatments is considered to be participating in the ongoing medical management of the injured employee and is therefore required to complete either the Doctor Training Module or the Limited Participation Doctor Training Module. Based on performance monitoring, the commission may modify the required training as appropriate.

The third significant issue surrounding these rule amendments related to out-of-state doctors applying to be on the ADL and the requirement of the doctor to provide a signed sponsorship affidavit by a doctor who is licensed in this state, who is on the ADL with a Level 2 Certificate of Registration, and who agreed to direct the out-of-state doctor's reviews. The requirement for affidavits to be submitted with a doctor's application has been removed from §180.20(c)(7) in recognition of the fact that a peer review doctor may work for more than one carrier, and that medical directors for carriers change over time. The amended rule further clarifies that the carrier requesting such a review has the responsibility to ensure that the work was performed under the direction of a doctor who is appropriately licensed in Texas and is on the ADL with a Level 2 Certificate of Registration. The carrier, upon request, must identify the directing doctor and present documentation that the review was performed under the direction of that doctor.

In summary, the commission is amending these three Chapter 180 rules to ensure that there are a sufficient number of qualified doctors of all types on and after September 1, 2003 to provide access to health care for injured employees and to provide evaluation of health care or income benefit eligibility for carriers.

New language is added to §180.20 (h)(3) as it was proposed to clarify that a doctor who is entitled to reimbursement based on paragraph (2)(A) and (B) of this subsection may perform medical services and bill for these services only after notification of such entitlement from the commission.

New language is added to §180.20 (h)(4) as it was proposed to clarify that a carrier who receives a bill from a doctor who is not entitled to reimbursement pursuant to §180.20(h)(2) shall deny the medical bill and send the required explanation of benefits (EOB) with appropriate payment exception code. The carrier may wish to inform the doctor of the commission's online process for application to the ADL, by directing the doctor to the commission's website: http://www.twcc.state.tx.us/information/doctorreq.html

Because new §180.20(h)(3) is added, subsequent subparagraphs have been renumbered.

Section 180.20(k) is amended to delete use of the terms "agreement or" because this use of the term "agreement" is inconsistent with the definition stated in §401.011(3) of the Act.

Section 180.23(c)(1)(B) is changed to clarify that a Level 1 Certificate of Registration allows a doctor to perform any utilization review or peer review functions, not just those reviews requested by a carrier.

Section 180.23(c)(1)(D) is amended to allow doctors with a Non-Medical Management designation to participate in regional networks established under §408.0221 of the Act, within the limitations of that designation.

Section 180.23(h)(4) is amended to delete use of the terms "agreement or" because this use of the term "agreement" is inconsistent with the definition stated in §401.011(3) of the Act.

Section 180.23(i)(1) is changed to clarify that doctors with exceptions to the requirement to be on the ADL are permitted to determine if permanent impairment exists and if no permanent impairment exists, to certify MMI. If there is permanent impairment, only a doctor who has successfully completed the IR training and testing requirements may certify MMI and assign impairment. This includes a doctor who has been granted a temporary exception.

Amendments to §180.20. Commission Approved Doctor List.

Subsection (a) is amended to reference §180.1 (relating to Definitions) for clarity as to the definition of the phrase "immediate post-injury medical care." A new (a)(1) is added that now states that the ADL as it exists prior to August 31, 2003 is null and void and any doctor that does not reapply to be on the ADL or whose application is not approved will not be on the ADL as of September 1, 2003. This provides clarity that being on the ADL list that exists as of August 31, 2003 and prior to that date does not entitle a doctor to provide and bill for health services on or after September 1, 2003; that there is a required application process and commission approval process for those desiring to be on the new ADL.

Amendments to subsection (b)(1) and (2) reflect the amended title of §180.23.

Amendments to subsection (c) clarify that an incomplete application will be rejected and will not be processed by the commission. This will prevent use of limited commission and MQRP resources to review incomplete applications.

Multiple amendments throughout subsection (c) relate to what shall be included in an application to the ADL. Subsection (c)(2) now requires that the application include the module of training that was taken and the date the training was completed. The training covers basic requirements of the workers' compensation system and focuses on return to work, efficient utilization of care, entitlement to benefits, maximum medical improvement (MMI), and the determination of the existence of permanent impairment. The key difference between the training modules is the intensity and depth of the material, not the content itself. Such required documentation of training will enable the commission and the doctor to have a record of the relevant workers' compensation information that was current at the time the doctor took the training and subsequently applied to be on the ADL.

As previously discussed, amendments to subsection (c)(7) delete the requirement that a doctor who is not licensed in Texas but wishes to perform utilization and/or peer reviews for a carrier or his agent, must submit a signed sponsorship affidavit by a doctor licensed in Texas who has agreed to direct the doctor's reviews. The requirement could have proven onerous given that a peer review doctor may work for more than one carrier (and therefore have more than one Texas-licensed doctor directing the peer reviews) and that medical directors that work for carriers change over time. Direction under a Texas-licensed doctor is a statutory requirement, so the amended subsection requires the carrier who uses such a doctor to ensure that the review is performed under the direction of an appropriately licensed doctor who is on the ADL with a Level 2 Certificate of Registration, and also requires that the carrier, upon request, present documentation that the review was performed under the direction of that doctor.

A new subsection (c)(8), as previously discussed, addresses doctors who are applying for a Level 1 Certificate of Registration with a Non-Medical Management designation. The new language requires the doctor to indicate on the application that the doctor's practice does not include ongoing medical management of injured employees, and clarifies that doctors providing pain management are considered to be participating in the ongoing medical management of injured employees. This rule amendment addresses access issues as discussed above.

Amendments to subsection (d) and (g)(4) (formerly (f)(4)) clarify that approval to be on the ADL may be issued with "conditions" as well as "restrictions" to be consistent with the statute (§408.023 and §408.0231), other portions of the rule, and §180.26.

New subsection (e) adds language relating to the commission's authority to grant temporary exceptions to the requirement to be on the ADL. A doctor with a temporary exception must meet all the requirements that doctors on the ADL must meet. A temporary exception does not constitute "being on the ADL," "approval to be on the ADL," or "denial of an application to be on the ADL." As discussed above, temporary exceptions are provided to address access issues.

Amendments to subsection (f), (formerly subsection (e)), delete language stating that an incomplete application will result in a denial to the ADL. An incomplete application will now be rejected and not processed in accordance with subsection (c) of this section. This will prevent use of limited commission and MQRP resources to review incomplete applications.

Amendments to (f)(3), (formerly (e)(4)), clarifies that a doctor may be denied admission to the ADL or admitted with conditions or restrictions for activities that would warrant application denial or restriction such as grounds that would require or allow the Medical Advisor to recommend deletion from the ADL or sanction of a doctor. Commission §180.26 (Doctor and Insurance Carrier Sanctions), includes a list of items for which the Medical Director is required to recommend deletion of a doctor from the ADL and a list of items for which the Medical Advisor may recommend sanction or deletion or suspension from the ADL. The amendments to (f)(3) clarify that any of the grounds in any of the lists may be the basis for ADL application denial or restriction. The former language was unintentionally restrictive.

What was formerly subsection (g) is deleted because the concepts expressed in that subsection are modified and incorporated into other subsections.

Subsection (h) is amended with reformatting and better organization of the provisions explaining when a doctor is entitled to reimbursement. Additionally, the concept of temporary exceptions to the ADL is incorporated here as well. As discussed above, the text from the rule as proposed is revised in the adopted rule

to clarify the point in time when a doctor is entitled to reimbursement, and to clarify what is required of a carrier upon receipt of a bill from a doctor who is not entitled to reimbursement. This should prevent confusion and differing interpretations of the rule by health care providers, insurance carriers, attorneys, and commission staff.

Amendments to subsection (i) state that the information provided by the commission through its Internet website will include the names and information about doctors who have been granted a temporary exception to the requirement to be on the ADL. Amendments to subsection (i)(1) also conform with the amendments to subsection (c) by stating that the lists provided by the commission will include the names and information about doctors whose application to be on the ADL has denied, but not those whose application was rejected because it was incomplete. New subsection (i)(5) requires the commission to include a list of doctors who have been granted a temporary exception to the requirement to be on the ADL, or have been granted an exception on a case-by-case basis. This will aid system participants in complying with the statutory and rule requirements regarding the ADL and reimbursement for medical services.

Subsection (j) formerly required doctors who are on the ADL to provide the commission with updated information within a certain timeframe. The amendments place the same requirements on ADL applicants because of the provisions that are now in the rule regarding granting a temporary exception to a doctor whose application has not yet been approved or denied.

New subsection (k) provides that Level 1 Certificates of Registration are valid for two years from date of issuance, and Level 2 Certificates of Registration are valid for four years from date of issuance unless the Certificate provides otherwise, the date is revised by commission order or decision, or the doctor has been removed from the ADL. This clarifies the commission's intent when the rule was adopted. As mentioned previously, this subsection was revised from the rule as proposed by deleting use of the term "agreement" to avoid inconsistency with the statutory definition of "agreement" and changing it to "agreed settlement pursuant to §180.26 of this title (relating to Doctor and Insurance Carrier Sanctions) or Texas Government Code §2001.056 (relating to Informal Disposition of Contested Case)." The amendments also allow the commission to stagger expiration and renewal dates which should aid in efficient use of limited commission and MQRP resources. Additionally, this subsection clarifies that doctors must reapply for the ADL upon expiration of their Certificate of Registration as was intended when the rule was adopted.

Amendments to §180.21. Commission Designated Doctor List.

Amendments to subsection (c) specify that, to be a Designated Doctor, a doctor must be currently active on the ADL with a Level 2 Certificate of Registration with no condition(s) or restriction(s), or must have a temporary exception to the requirement to be on the ADL, thus incorporating the concept of a temporary exception in the Designated Doctor List (DDL) rules, as done in the ADL rules.

What was formerly subsection (d) is deleted and remaining subsections are redesignated accordingly. The text of former subsection (d) failed to make a clear distinction between the old DDL and the new DDL, because it contained text about deletion from the existing DDL. In reality, just as with the ADL, the DDL existing as of and prior to August 31, 2003, will no longer exist, so there is no list from which to be deleted. The potentially confusing text is deleted and is clarified elsewhere in the adopted rules.

Amendments to subsection (d), (formerly subsection (e)), contains new language stating that incomplete applications to the DDL will be rejected and not processed, as with incomplete applications to the ADL. This will prevent use of limited commission and MQRP resources to review incomplete applications.

Amendments to subsection (f), (formerly subsection (g)), reference the requirements of (c) (1) of this section (which incorporates the concept of the temporary exception to the requirement to be on the ADL), and adds clarity and consistency to the organization of the grounds for denial of admission to the DDL.

Amendments to §180.23 - Formerly titled "Commission Required Training for Doctors/Certification Levels," Amended title "Commission Required Training for Doctors/Certificate of Registration Levels"

Amendments to subsection (a) replace the word "certified" with the more appropriate word "approved." "Certified" has very specific connotations in some instances, and could be confusing if used here.

Amendments to subsection (b) clarify that exceptions to training or registration requirements or authorization to perform functions not normally permitted by the doctor's Certificate of Registration may be granted (rather than shall), and when granted, are granted on a per-request, per-case basis.

Amendments to and new language in subsection (c) introduce the concept of a Level 1 Certificate of Registration with a Non-Medical Management designation. As previously discussed, existing training requirements could result in insufficient access to doctors whose practice does not, by nature, include ongoing medical management of injured employees. The rule states the types of medical practices that the commission has determined are in this category: Anesthesiology - Surgical Only (excludes pain management), Radiology, and Pathology. The amendments to this subsection allow doctors with a Non-Medical Management designation to provide medical services to an unlimited number of Texas workers' compensation claimants. Additions to this subsection also clarify that doctors with this designation are not allowed to perform any of the functions listed in subparagraphs (B) of this subsection (utilization review or peer review). As discussed above, the rule as proposed has been revised in the adopted rule to allow a doctor with a Designated Doctor List (DDL) designation to participate in a network and to clarify that a doctor with a Level 1 Certificate of Registration may perform may perform any utilization review or peer review functions, not just those reviews requested by a carrier. These amendments address access issues. Other amendments to subsection (c) reflect the amended title of §180.23, as do amendments to subsection (g)(1)(B).

Amendments to subsection (h) clarify that the Certificates of Registration will expire and require renewal as was intended when the rule was adopted. Paragraph (3) allows the commission to prescribe different training by doing so on the application form for Level 1 Certificate of Registration. This allows the commission to specify different training requirements for a Level 1 Non-Medical Management Certificate of Registration and to revise those requirements as monitoring may show to be appropriate in the future. This addresses access issues. Paragraph (4) contains amended language addressing the renewal of Certificates of Registration and allowing the requirement for follow-up training for Certificates to be modified if the Certificate

provides another date; the date is revised by commission order or decision; or the doctor has been removed from the ADL. This will allow staggered expiration and renewal dates, which should aid in efficient use of limited commission and MQRP resources. As discussed above, this subsection is revised from the rule as proposed by deleting use of the terms "agreement or" to avoid inconsistency with the statutory definition of "agreement" and changing it to "agreed settlement pursuant to §180.26 of this title (relating to Doctor and Insurance Carrier Sanctions) or Texas Government Code §2001.056 (relating to Informal Disposition of Contested Case)."

Also as discussed above, subsection (i) is revised from the rule as proposed to incorporate into the MMI/IR provisions, the concept of a temporary exception to the requirement to be on the ADL, as is done in other sections of the amended rules.

Other amendments are proposed and adopted for consistency of terminology and consistency with other Chapter 180 Rules.

Comments supporting the proposed amendments to §180.20 - 180.21 and §180.23 were received from Insurance Council of Texas.

Comments opposing the proposed amendments to §180.20 - 180.21 and §180.23 were received from Flow Enterprises, Inc.

In addition to supporting or opposing various portions of the rules, commenters made suggestions for improvements to the rules or asked for clarification on certain points. Such comments containing recommendations were received from the following groups: Insurance Council of Texas; Texas Chiropractic Association; and Texas Mutual Insurance Company.

Summaries of the comments and commission responses are as follows:

General

COMMENT: Commenter provided general opposition to the proposed rules and indicated that doctors are not willing to attend a course to continue to treat injured employees. Commenter implied that such a concept is discriminatory to both the injured employees and employers, and the rule changes are not the answer to fraud within the system.

RESPONSE: The commission disagrees that doctors are not willing to take an online training course every two or four years. House Bill 2600 (HB-2600), Article 1, enacted in the 2001 Legislative Session, changed the statutory mandates for doctors in the system to be better educated about the requirements of the workers' compensation system, and consequently changed the way doctors are allowed to participate in the system from automatic inclusion (based upon initial licensure) to a privilege which must be sought through application. As a result of this legislative change, the Chapter 180 rules were adopted and established reasonable training requirements for doctors who wish to be on the ADL. This training can be completed via self-study/distance learning and should not deter qualified conscientious doctors from participating in the system. There are two online training modules for doctors: the Limited Participation Doctor Training Module, which offers a Level 1 Certificate of Registration with the requirement of renewed training in two years; and the Doctor Training Module, which offers a Level 2 Certificate of Registration with the requirement of renewed training in four years. In addition, these amendments allow for a third level of training, Non-Medical Management, that allows doctors within this category to take training relevant to their role and to immediately continue with the online application process. This will ensure that there are sufficient number of doctors of this type to perform functions that do not include ongoing medical management of injured employees. The commission further disagrees with commenter's implication that such training requirements are discriminatory to any system participant. The training is designed to assist doctors as the proposed rules are not intended to be the answer to fraud within the system.

Rule I80.20

COMMENT: Commenter supported the adoption of the proposed amendments to §180.20.

RESPONSE: The commission agrees that the amended rules are necessary changes to ensure access to quality health care as and when needed and access to evaluations of health care and income benefit eligibility.

Subsection (a)

COMMENT: Commenter recommended deletion of the phrase in subsection (a), "immediate post-injury medical care" when used in the same context as "emergency medical care." Commenter asserted that by definition in §180.1(11), a significant interim period of time may elapse between the actual date of injury and the "first date of medical attention," and further stated that only doctors on the ADL should be able to treat in situations other than "emergency care."

RESPONSE: The commission disagrees with the recommendation to delete the phrase "immediate post-injury medical care." Section 408.023(f) of the Act provides an exception from the ADL requirement for a doctor performing immediate post-injury medical care and authorizes the commission to define this term. The definition for "immediate post-injury medical care" is set out in §180.1(11), and is limited to health care provided on the date that the employee first seeks medical attention.

Subsection (b)(3)

COMMENT: Commenter recommended adding language to require a signed statement if no financial interests exists. Commenter stated this would alleviate the possibility that this disclosure could be omitted on the application.

RESPONSE: The commission disagrees that the recommended language addition is necessary because the application process is already designed to capture this information in the event the doctor applying has no financial disclosures. The doctor is instructed to indicate within the application whether or not there is a disclosure to make.

Subsection (c)(7)

COMMENT: Commenter requested clarification as to what is acceptable documentation to prove that the review was performed under the direction of an in-state doctor. Commenter further requested a description or list of examples of appropriate documentation.

RESPONSE: The commission disagrees that further clarification by use of examples within the rule is necessary. The amended rule requires the carrier to provide upon request the identity of the directing in-state doctor and documentation that the review was performed under the direction of that doctor. Because documentation will vary from case-to-case the rule allows carriers the flexibility to provide documentation appropriate and available in a particular case. The documentation will most likely be the

in-state doctor's acknowledgement (e.g., initials, email, signature block, etc.) that the review was performed under his/her direction.

Subsection (g)

COMMENT: Commenter recommended the following additional wording: "The Commission shall notify a doctor of the commission's approval or denial within 60 days of receiving a complete application; or, within 60 days notify the applicant of the date the decision will be issued. If no decision is issued within 60 days of application, the applicant is granted an automatic temporary exception until final adjudication is reached on the application." Commenter's rationale is that there should be a definite time frame for the commission to respond to applications. Commenter further stated that as proposed in the rule, the commission may simply not act upon an application instead of denying or restricting a doctor, and consequently, the ADL applicant would have no due process as outlined for adverse decisions.

RESPONSE: The commission agrees in part with commenter's recommendations. The commission agrees that it is important for the applicant doctor to know the status of the application in a timely manner. However, the commission disagrees with the addition of a 60-day deadline for decision on the application. The online application design being used by the commission enables the doctor and the commission staff to work together through email or other means of communication towards completion of the application itself. The commission will then review the information for accuracy and may need to verify certain types of information. Because this review will require sufficient time to complete and because it is not known how many applications will be processed or how many will be filed in the last months before September 1, 2003, a specific time for completing this task has not been included. Commission staff will endeavor to provide a response to the applicant doctor as soon as possible. To address this concern, the commission has created through this amended rule the category of "temporary exception" which allows a doctor to participate in the system while the doctor's application is processed.

Subsection (h)

COMMENT: Commenter recommended deletion of the phrase "immediate post-injury medical care" in subsection (h)(1), (2), and (4) when used in the same context as "emergency medical care." Commenter asserted that by definition in §180.1(11), a significant interim period of time may elapse between the actual date of injury and the "first date of medical attention," and further stated that only doctors on the ADL should be able to treat in situations other than "emergency care."

RESPONSE: The commission disagrees with the recommendation to delete the phrase "immediate post-injury medical care." Section 408.023(f) of the Act provides an exception from the ADL requirement for a doctor performing immediate post-injury medical care and specifically authorizes the commission to define this term. The definition for "immediate post-injury medical care" set out in §180.1(11), and is limited to health care provided on the date that the employee first seeks medical attention.

Subsection (h)(2)

COMMENT: Commenter recommended adding the following language to subsection (h)(2), "A doctor is entitled to reimbursement in accordance with the doctor's level of Certificate of Registration 'or granted exception status' and the Statute and Rules...." The commenter indicated the addition of the exception status will allow the carrier to verify via the commission's website that the provider who is not on the ADL could be reimbursed on an initial audit of the bill by the carrier.

RESPONSE: The commission disagrees that the recommended language addition is needed. Subsection (h)(2)(B) provides that a doctor who has been granted a temporary exception is entitled to reimbursement. The commission's website will provide any active commission list(s) (e.g., ADL, DDL, IR/MMI List, etc.) including any temporary exception status that a doctor may have. Carriers and other system participants will be able to download the reports that the system provides related to this information from the commission's website.

Subsection (h)(3)

COMMENT: Commenter requested clarification as to how an insurance carrier will know the level of a doctor's certificate of registration? Commenter implied the interpretation of §180.20 (h)(2) is that the amount of reimbursement is different depending on the doctor's certificate of registration level.

RESPONSE: The commission disagrees. The amount of reimbursement to a doctor for a particular service is not different for different levels of certification, but whether the doctor is eligible for reimbursement for a service can depend on the doctor's Certificate of Registration level. Carriers and other system participants will be able to determine the level of Certification for a doctor from the commission's website.

COMMENT: Commenter recommended deleting all of subsection (h)(3)(C) because, as per §133.304, the insurance carrier should be responsible for providing a full audit of the billed charges only after validation of the providers' entitlement to reimbursement have been established. Commenter recommended deleting in subsection (h)(3)(D), the sentence "Within 14 days of receipt of notice that the doctor has been granted an exception, the carrier shall remit payment." Commenter further recommended replacing it with the sentence, "A provider that has been granted an exception must file a request for reconsideration with the carrier as outlined in §133.304. The carrier shall process the request for reconsideration in accordance with §133.304." Commenter stated this would require less tracking of the process by the carrier and the Commission. Commenter recommended the following language change to subsection (h)(3)(E), "The doctor shall be entitled to interest as outlined in §133.304." Commenter additionally recommended deleting the reference to the carrier remitting payment within 14 days of receipt of notice that the doctor has been granted an exception. Commenter indicated the carrier should not have to create another process for tracking reimbursement of bills separate from those processes outlined in §133.304.

RESPONSE: The commission agrees in part. The commission agrees that carriers should not have to create another process for tracking reimbursement of bills separate from those processes outlined in §133.304. The commission also agrees with the suggested deletions, and has deleted all of proposed subparagraphs (h)(3)(A - E). Subsection (h)(3) has been changed to clarify that a doctor is entitled to reimbursement based on the doctor being on the ADL or granted a temporary exception to the requirement to be on the ADL at the time the service was provided. Subsection (h)(4) has been changed to clarify how carriers should process bills from doctors who do not appear on the commission's list of doctors eligible (by virtue of their certification or exception) to receive reimbursement. Beginning on September 1, 2003, doctors

who are not on the ADL or granted an exception by the commission to be on the ADL, at the time a service is provided will not be entitled to reimbursement for those services. The commission disagrees with the recommended replacement language to subparagraphs (h)(3)(D) and (E) because such language replacement would allow reimbursement for services provided while a doctor was not on the ADL or approved for exception to this requirement. A bill submitted by a doctor who is not entitled to reimbursement because the doctor does not meet the requirements of subsection (h)(2), will not require the carrier to further review the bill, but instead requires the carrier to deny the bill with the appropriate payment exception code. If the doctor can show that he/she was eligible to receive reimbursement, the doctor can ask for reconsideration of the denial and provide additional documentation. The submission of an application for the Approved Doctor List (ADL) does not establish the doctor's approval to be on the ADL, nor does the submission of an application entitle the doctor to reimbursement for treatments or services provided. The commission must review an application and provide a doctor with approval as indicated by a Certificate of Registration or an exception. Commission approval must have been granted at the time the service is performed for the doctor to be entitled to reimbursement for that service.

Subsection (i)

COMMENT: Commenter recommended that all information on the commission's website should be available for download, including information relating to ADL exception and the effective dates for each provider's ADL status. Commenter stated that knowing the effective date of a provider's status is important to the insurance carrier to audit the provider's charges correctly, and to track the reason for denial and/or subsequent reimbursement of the provider's charges. Carriers must be able to obtain ADL information in a format that can be integrated with the carrier's bill processing system.

RESPONSE: The commission agrees and has developed a data report that can be easily downloaded from the website and will contain all necessary information pertaining to each doctor's list status or temporary exception status, effective dates, and other important details. This data can be used to develop programs to interface the commission's data with external customers' systems. The report can be found by accessing the TXCOMP site and selecting the reports menu available to all system participants.

Subsection (k)

COMMENT: Commenter recommended deleting the term "agreement" in subsection (k), or adding language to define what exceptions warrant an "agreement." Commenter's assertion is that the term "agreement" is not defined and does not indicate who the parties to an agreement are.

RESPONSE: The commission agrees that the term should not be used in these rules, but for a reason other than the one given by the commenter. Use of the term in these rules is confusing given the statutory definition of agreement in §401.011(3) of the Act. Therefore, the commission has deleted the terms "agreement or" from subsection (k) of the amended rule, and replaced the language with, "agreed settlement pursuant to §180.26 of this title (relating to Doctor and Insurance Carrier Sanctions) or Texas Government Code §2001.056 (relating to Informal Disposition of Contested Case)."

Rule 180.21

COMMENT: Commenter supported the adoption of the proposed amendments to §180.21.

RESPONSE: The commission agrees that the amended rules are necessary changes to ensure access to quality health care as and when needed and access to evaluations of health care and income benefit eligibility.

Subsection (c)(5)

COMMENT: Commenter recommended adding that supplemental training shall be completed every two years (rather than between 18 and 30 months) from the date the doctor is certified as an approved doctor, or has passed the test required to obtain and retain full maximum medical improvement (MMI) / Impairment Rating (IR) authorization, and within 12 months following published updates or changes in the AMA *Guides to the Evaluation of Permanent Impairment.* Commenter's stated rationale for this recommendation is that the decrease in timeframe for completion of supplemental training ensures accurate, high quality, and currently relevant Designated Doctor MMI/IR examinations.

RESPONSE: The commission agrees in part with commenter's recommendation that re-education, testing and re-certification should occur within a reasonable timeframe following published update or changes in the AMA *Guides to the Evaluation of Permanent Impairment* (Guides). The commission disagrees with the deletion of the language requiring supplemental training to be completed between 18 and 30 months following the doctor's passing the test required to obtain and retain full MMI/IR authorization because the additional training needs to be done in a reasonable interval between testing dates. Additional training and testing every four years as required by the commission is well-within acceptable standards for re-certification. Most boards, for example, re-certify every seven to ten years.

Rule 180.23

COMMENT: Commenter supported the adoption of the proposed amendments to §180.23.

RESPONSE: The commission agrees that the amended rules are necessary changes to ensure access to quality health care as and when needed and access to evaluations of health care and income benefit eligibility.

Subsection (b)

COMMENT: Commenter opposed the language as proposed in subsection (b) because it does not give a doctor an incentive to complete all training and meet the requirements to be added to the ADL. Commenter stated the language provides incentive for doctors granted an exception to never meet the ADL training requirements, and that the Legislature never intended such an outcome when HB-2600 was passed.

RESPONSE: The commission disagrees. The amendments to subsection (b) clarify and strengthen the original intent of this subsection to allow individual exceptions to training and registration requirements that may be granted on a case-by-case basis to a doctor. This provision addresses access to care concerns. As an example, an injured employee who works out of state may seek treatment by a doctor from that state who is not on the ADL. In order to assure access to medically necessary health care for that injured employee, the commission may grant that out of state doctor an exception from certain training and registration requirements for the provision of services to that specific injured employee. The commission will monitor these exceptions

as they are granted on a case-by-case basis. A temporary exception to the requirement to be on the ADL necessitates the doctor to successfully complete the training, application and financial disclosure required of all applicants.

COMMENT: Commenter recommended adding language of an example to subsection (b), and suggested the subsection be changed to read, "The exemption shall be considered temporary, shall have specific effective dates, and indicate any specifics of the exception, such as whether it is for a specific injured worker."

RESPONSE: The commission disagrees that recommended language is necessary. Most of the suggested additional information is already designed to be made available online to all concerned system participants. For case-by-case exceptions granted, subsection (b) provides that the commission will provide a copy of the approval to the carrier. The commission has developed a data report that can be easily downloaded from the website that will contain all necessary information pertaining to each doctor's list status or temporary exception status, effective dates, and other important details. This data can be used to develop programs to interface the commission's data with external customers' systems. The report can be found by accessing the TXCOMP site and selecting the reports menu available to all system participants.

Subsection (c)(1)(A)

COMMENT: Commenter recommended deletion of the phrase in subsection (c)(1)(A), "immediate post-injury medical care" when used in the same context as "emergency medical care." Commenter asserted that by definition in §180.1(11), a significant interim period of time may elapse between the actual date of injury and the "first date of medical attention," and further stated that only doctors on the ADL should be able to treat in situations other than "emergency care."

RESPONSE: The commission disagrees with the recommendation to delete the phrase "immediate post-injury medical care." Section 408.023(f) of the Act provides an exception from the ADL requirement for a doctor performing immediate post-injury medical care and specifically authorizes the commission to define this term. The definition for "immediate post-injury medical care" set out in §180.1(11), and is limited to health care provided on the date that the employee first seeks medical attention.

Subsection (c)(1)(D)

COMMENT: Commenter recommended deleting the last sentence of subsection (c)(1)(D). The commenter stated that deletion of the sentence would remove the restriction of Non-Medical Management (NMM) providers from participating in a regional network or performing utilization and/or peer review functions. Commenter further stated these types of providers (NMM) are necessary to the medical treatment of injured employees and should be available within regional network, and for performing UR/PR functions because their skill and experience should be considered valuable.

RESPONSE: The commission agrees in part. Doctors wishing to participate in a regional network within the workers' compensation system should be allowed to do so as an NMM doctor and according to the limitations of that designation and the adopted rule has been revised from the rule as proposed, to allow this. The commission disagrees that a doctor with an NMM designation should be permitted to perform utilization review and/or peer review. Doctors who perform any utilization review or peer review functions, including reviews for independent review organizations, are required to participate in the system as an ADL Level 1 or 2 doctor, and not request distinction as an NMM. The commission's training modules provide the doctor with the necessary tools for such endeavors.

In reviewing this comment, the commission determined revision of §180.23(c)(1)(B) is appropriate to clarify that doctors with a Level 1 Certificate of Registration may perform any utilization review or peer review functions, not just those requested by carriers. The rule has been amended to reflect these changes.

Subsection (h)

COMMENT: Commenter recommended a revision to subsection (h) to read, "ADL approval requires a doctor to successfully complete commission prescribed training prior to admission and renewal." Commenter further recommended deleting the phrases "at a minimum," and "continued approval status at a minimum requires a doctor to successfully complete follow up training as required." Commenter stated that the phrase "at a minimum" implies that the requirements are minimum standards when additional requirements are stated in §180.20.

RESPONSE: The commission disagrees. The terms "at a minimum" as used in the amended rule, are used to establish baseline requirements for required training. While section 180.23 is specifically related to training requirements, and additional requirements are addressed in §180.20.

In reviewing the comment related to subsection (h), the commission determined revision of §180.23(h)(4) is appropriate to clarify that the terms "agreement or" should not be used in §180.20(k) and §180.23(h)(4). Use of the terminology in these two rules is confusing given the statutory definition of agreement in §401.011(3) of the Act. Therefore, the commission has deleted the terms "agreement or" from subsection (h)(4) of this amended rule and has further amended subsection (h)(4) to reflect the replacement language, "agreed settlement pursuant to §180.26 of this title (relating to Doctor and Insurance Carrier Sanctions) or Texas Government Code §2001.056 (relating to Informal Disposition of Contested Case)."

The amended rules are adopted pursuant to: the Texas Labor Code, §401.011 which contains definitions used in the Texas Workers' Compensation Act; the Texas Labor Code, §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; the Texas Labor Code, §402.042, which authorizes the Executive Director to enter orders as authorized by the Act as well as to prescribe the form and manner and procedure for transmission of information to the commission; the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §406.010, which authorizes the commission to adopt rules regarding claims service; the Texas Labor Code, §408.021, which states an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code, §408.022, which address choice of treating doctor; the Texas Labor Code, §408.023, which requires the commission to develop a list of approved doctors and lay out the requirements for being on the list and which grants the commission the authority to provide for exceptions to the requirement to be on the ADL, as necessary to ensure that employees have access to health care; the Texas Labor Code, §408.0231, which provides the commission with the responsibility for maintenance of the list, with the authority for

imposing sanctions, and requires the commission to adopt rules; the Texas Labor Code, §408.025 which requires the commission to specify by rule what reports a health care provider is required to file; the Texas Labor Code, §413.002, which requires the commission to monitor health care providers and carriers to ensure compliance with commission rules relating to health care including medical policies and fee guidelines; the Texas Labor Code, §413.011, which requires the commission by rule to establish medical policies relating to necessary treatments for injuries and designed to ensure the quality of medical care and to achieve effective medical cost control; the Texas Labor Code, §413.012, which requires the commission to review and revise medical policies and fee guidelines at least every two years to reflect current medical treatment and fees that are reasonable and necessary; the Texas Labor Code, §413.013, which requires the commission by rule to establish a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services; a program for the systematic monitoring of the necessity of the treatments administered and fees charged and paid for medical treatments or services including the authorization of prospective, concurrent or retrospective review and a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services, and a program to increase the intensity of review; the Texas Labor Code, §413.014, which 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, §413.017, which establishes medical services to be presumed reasonable when provided subject to prospective, concurrent review and are authorized by the carrier; the Texas Labor Code, §413.031, which establishes the right to access medical dispute resolution; the Texas Labor Code, §413.041, which requires financial disclosure of financial interests by health care providers and their employers, which requires the commission to adopt federal standards prohibiting payment of acceptance of payment in exchange for health care referrals, and which prohibits payment to a provider during a period of noncompliance with disclosure requirements; the Texas Labor Code, §413.0511, which creates the position of Medical Advisor and imbues the position with certain responsibilities and authority; the Texas Labor Code, §413.0512, which creates the Medical Quality Review Panel (MQRP) and grants it certain responsibilities and authority; certain responsibilities and authority; the Texas Labor Code §413.0513, which lays out confidentiality provisions relating to the MQRP; the Texas Labor Code, §414.007, which allows the review of referrals from the Medical Review Division by the Division of Compliance and Practices; and; the Texas Labor Code, §415.0035, which establishes administrative violations for repeated administrative violations.

The rule amendments are adopted pursuant to: the Texas Labor Code, §401.011, §401.024, §402.042, §402.061, §406.010, §408.021 - 408.023, §408.0231, §408.025, §13.002, §§413.011 - 413.014, §413.017, §413.031, §413.041, §§413.0511 - 413.0513, §414.007, and §415.0035.

§180.20. Commission Approved Doctor List.

(a) This section governs the commission's approved doctor list (ADL). Except in an emergency, as defined in §133.1 of this title (relating to Definitions For Chapter 133) or for the immediate post-injury medical care, as defined in §180.1 of this title (relating to Definitions) injured employees (employees) shall receive health care from a doctor on the ADL:

(1) The ADL established by the statute and commission rules as it exists on August 31, 2003 is null and void as of September 1, 2003. Any doctor on the ADL prior to September 1, 2003 who does not reapply to be on the ADL or whose application is not approved will not be on the ADL as of September 1, 2003.

(2) On or after September 1, 2003, doctors who provide any functions in the Texas workers' compensation system are required to be on the ADL.

(b) Until September 1, 2003, unless deleted from the list by the commission, the ADL includes all doctors licensed in Texas on or after January 1, 1993, and doctors licensed in other jurisdictions who have been added to the list by the commission. Doctors licensed in other jurisdictions may ask to be added to the list by submitting a written request containing information prescribed by the commission. Doctors on the ADL on or after September 1, 2003, whether licensed in Texas or licensed by another jurisdiction, shall have:

(1) successfully completed the training required by §180.23(h) of this title (relating to Commission Required Training for Doctors/Certificate of Registration Levels);

(2) applied for a Certificate of Registration with the commission in the form and manner prescribed by the commission; and

(3) disclosed financial interests as required by Texas Labor Code §413.041 and §180.24 of this title (relating to Financial Disclosure) with the application.

(c) An incomplete application for registration to be admitted to the ADL pursuant to this section shall be rejected and shall not be processed. A complete application shall include:

(1) general contact information including, but not limited to: name, mailing address, voice and facsimile numbers, and an email address;

(2) the training module taken and date completed;

(3) Impairment Rating Skills Examination score, if applicable;

(4) verification of licensure;

(5) disciplinary actions or practice restrictions by an appropriate licensing or certification authority, if any;

(6) an agreement that the doctor will comply with the Statute and Rules, including but not limited to, cooperating with commission monitoring and review efforts such as audits by the commission and paying audit bills when required by Statute or Rule;

(7) if the doctor applying for the ADL is not licensed in this state but wishes to perform utilization review and/or peer reviews for an insurance carrier or its agent, the applicant must certify that the reviews will be performed under the direction of a doctor who is licensed in this state and has an ADL Level 2 Certificate of Registration (as provided in §180.23 of this title). The carrier requesting such a review must ensure that the work was performed under the direction of an appropriate in-state doctor, and, upon request, must identify the in-state doctor and present documentation that the review was performed under the direction of that doctor; and

(8) if the doctor is applying for a Level 1 Certificate of Registration with a Non-Medical Management designation as provided in §180.23(c)(1)(D) of this title, the doctor must indicate in the appropriate place on the application that the doctor's practice does not include ongoing medical management, including pain management, of injured employees.

(d) The commission may utilize members of the Medical Quality Review Panel for evaluating ADL applications and making recommendations to the Medical Advisor to approve, approve with condition(s) or restriction(s), or deny admission to the ADL.

(e) The commission may grant a temporary exception to the requirement to be on the ADL to ensure that employees have access to health care pending commission action on a doctor's application. A doctor with a temporary exception must meet all the requirements that doctors on the ADL must meet. A temporary exception does not constitute "being on the ADL," "approval to be on the ADL," or "denial of an application to be on the ADL."

(f) Doctors shall be denied admission to the ADL or admitted with condition(s) or restriction(s) for:

(1) failing to complete required training;

(2) having relevant restriction(s) on their practice (including, but not limited to, prior deletion from the ADL); or

(3) other activities which warrant application denial or restriction such as grounds that would require or allow the Medical Advisor to recommend deletion of a doctor from the ADL or other sanction of a doctor as specified in §180.26 of this title (relating to Doctor and Insurance Carrier Sanctions) or the Statute and Rules.

(g) The commission shall notify a doctor of the commission's approval or denial of the doctor's application to the ADL.

(1) Denials or approvals with condition(s) or restriction(s) shall include the reason(s) for the action.

(2) Within 14 days after receiving the notice, the doctor may file a response, which addresses the reasons given for the denial or admission with restriction(s).

(A) If a response is not received by the 15th day after the date the doctor received the notice, the action shall be final and no further notice shall be sent.

(B) If a response which disagrees with the action is timely received, the commission shall review the response and shall notify the doctor of the commission's final decision. If the final decision is not an unrestricted approval, the commission's final notice shall explain the reason why the doctor's response did not convince the commission to grant the doctor an unrestricted admission to the ADL.

(3) All notices under this subsection shall be delivered by a verifiable means.

(4) The fact that the commission did not take action to deny admission to a doctor or admit a doctor with condition(s) or restriction(s) to the ADL does not waive the commission's right to review or further review a doctor and take action at a later date.

(h) Chapter 133 of this title (relating to Benefits - Medical Benefits) applies to all medical bills, including those from doctors who were not on the ADL at the time the health care was rendered.

(1) All licensed doctors, whether on the ADL or not, are entitled to reimbursement in accordance with the Statute and Rules for providing reasonable and necessary emergency or immediate post-injury medical care.

(2) A doctor is entitled to reimbursement in accordance with the doctor's level of Certificate of Registration and the Statute and Rules for directly or indirectly providing reasonable and necessary health care (other than emergency or immediate post-injury medical care) or other medical services (such as peer reviews or other evaluations) if:

(A) the doctor was on the ADL at the time the service was provided;

(B) the doctor was granted a temporary exception to the requirement to be on the ADL at the time the service was provided; or

(C) the doctor has been granted an exception on a case-by-case basis as provided in §180.23(b) of this title, and the claim for which the doctor is billing is one for which the doctor has been granted an exception.

(3) A doctor who is entitled to reimbursement based on paragraph (2)(A) and (B) of this subsection may perform medical services and bill for those services only after notification of such entitlement from the commission.

(4) A carrier who receives a bill from a doctor who is not entitled to reimbursement pursuant to paragraph (2) of this subsection shall deny the medical bill and send the required explanation of benefits (EOB) with the appropriate payment exception code.

(5) Notwithstanding this subsection, a doctor's entitlement to direct or indirect reimbursement for health care or medical opinions directly or indirectly provided (other than for emergency or immediate post-injury medical care) may be limited by sanction imposed by the commission.

(i) The commission shall make available through its Internet website the names, licensure and other identification information, and ADL or ADL exception status of:

(1) doctors who are not on the ADL because their applications were denied;

(2) doctors on the ADL (including a description of any privileges, conditions or restrictions placed on the doctor by the commission);

(3) doctors deleted or suspended from the ADL or otherwise sanctioned by the commission (including a description of the sanction);

(4) doctors reinstated to the ADL or whose sanctions were lifted by the commission; and

(5) doctors granted a temporary exception from the requirement to be on the ADL pursuant to subsection (e) of this section or on a case-by-case basis.

(j) Doctors who are on the ADL or who have applied to be on the ADL shall provide the commission with updated information within 30 days of a change in any of the information provided to the commission on the doctor's ADL application.

(k) Level 1 Certificates of Registration are valid for two years from date of issuance, and Level 2 Certificates of Registration are valid for four years from date of issuance unless the Certificate provides otherwise, the date is revised by agreed settlement pursuant to §180.26 of this title (relating to Doctor and Insurance Carrier Sanctions) or Texas Government Code §2001.056 (relating to Informal Disposition of Contested Case), Commission order or decision, or the doctor has been removed from the ADL. Upon expiration of a doctor's Certificate of Registration, the doctor must reapply for the ADL.

§180.21. Commission Designated Doctor List.

(a) In order to serve as a designated doctor, a doctor must be on the Designated Doctor List (DDL).

(b) To be on the DDL prior to September 1, 2003, the doctor shall at a minimum:

(1) be currently active on the Approved Doctor List (ADL) as set forth in Texas Labor Code §408.023 and §180.20 of this title (relating to Commission Approved Doctor List);

(2) have maintained for the past three years and continue to maintain an active practice;

(3) have filed a request to be on the DDL in the form and manner prescribed by the commission and been approved by the commission; and

(4) meet the following training requirements:

(A) have successfully completed commission-approved training in the proper use of the AMA Guides prior to submission of an application;

(B) have successfully completed commission-approved training at least every two years from the date of the last training; and

(C) have passed the commission-approved written examination for impairment rating training within the timeframe specified by the commission.

(c) To be on the DDL on or after September 1, 2003, the doctor shall at a minimum:

(1) be currently active on the ADL with a Level 2 Certificate of Registration with no condition(s) or restriction(s), or have a temporary exception to the requirement to be on the ADL, as set forth in Texas Labor Code §408.023 and §180.20 of this title;

(2) have had an active practice for one year during their career;

(3) be fully authorized to assign impairment ratings and certify maximum medical improvement (MMI) under §180.23(i) of this title (relating to Commission Required Training for Doctors/Certificate of Registration Levels);

(4) have filed a request in the form and manner prescribed by the commission, and have been approved by the commission to be included on the DDL; and

(5) either maintain an active practice or successfully complete commission-approved supplemental training on medical issues relevant to workers' compensation and/or serving as a designated doctor. Supplemental training shall be completed between 18 and 30 months following the doctor's passing the test required to obtain and retain full MMI/impairment authorization.

(d) An incomplete application for registration to be admitted to the DDL pursuant to this section and other Rules shall be rejected and shall not be processed. A complete application shall include:

(1) general contact information including, but not limited to: name, mailing address, voice and facsimile numbers and an email address;

(2) the training certificate indicating the level of training completed;

(3) Impairment Rating Skills Examination score;

(4) verification of licensure;

(5) information on the doctor's training and experience in various types of health care and injury areas; and

(6) disciplinary actions or practice restrictions by an appropriate licensing or certification authority, if any.

(e) The commission may utilize members of the Medical Quality Review Panel (MQRP) for evaluating DDL applications and making recommendations to the Medical Advisor to approve or deny admission to the DDL. The commission may also utilize members of the MQRP regarding deletion, suspension, or other sanction of a designated doctor as provided in this section.

(f) Doctors shall be denied admission to the DDL:

(1) if the doctor does not meet the requirements of subsection (c)(1) of this section;

(2) if the doctor has not completed required training in accordance with §180.23(i) of this title and passed the commission approved test;

(3) for failing to submit a complete application in accordance with this section;

(4) for having a relevant restriction on their practice (including, but not limited to, prior deletion from the ADL or DDL or a prior ADL restriction); or

(5) for other activities which warrant application denial such as grounds that would require the Medical Advisor to recommend deletion of a doctor from the ADL or other sanction of a doctor as specified in §180.26 of this Title (relating to Doctor and Insurance Carrier Sanctions) or the Statute and Rules.

(g) The commission shall notify a doctor of the commission's approval or denial of the doctor's application to the DDL.

(1) Denials shall include the reason(s) for the denial.

(2) Within 14 days after receiving the notice, the doctor may file a response which addresses the reasons given for the denial.

(A) If a response is not received by the 15th day after the date the doctor received the notice, the denial shall be final and no further notice shall be sent.

(B) If a response which disagrees with the denial is timely received, the commission shall review the response and shall notify the doctor of the commission's final decision. If the final decision is a denial, the commission's final notice shall explain the reason why the doctor's response did not convince the commission to admit the doctor to the DDL.

(3) All notices under this subsection shall be delivered by a verifiable means.

(4) The fact that the commission did not take action to deny or restrict admission to the DDL does not waive the commission's right to review or further review a doctor and take action at a later date.

(h) When necessary because the injured employee is temporarily located or is residing out-of-state, the commission may waive any of the requirements as specified in this rule for an out-of-state doctor to serve as a designated doctor to facilitate a timely resolution of the dispute.

(i) Doctors on the DDL shall provide the commission with updated information within 30 days of a change in any of the information provided to the commission on the doctor's DDL application.

(j) In addition to the grounds for deletion or suspension from the ADL or for issuing other sanctions against a doctor under §180.26 (of this title), the commission shall delete or suspend a doctor from the DDL, or otherwise sanction a designated doctor for noncompliance with requirements of this section or any of the following:

(1) four refusals within a 90-day period, or four consecutive refusals to perform within the required time frames, a commission requested appointment for which the doctor is qualified;

(2) misrepresentation or omission of pertinent facts in medical evaluation and narrative reports;

(3) having a pattern of practice of unnecessary referrals to other health care providers for the assignment of an impairment rating or determination of MMI;

(4) submission of inaccurate or inappropriate reports as a pattern of practice due to insufficient examination and analysis of medical records;

(5) willful failure to timely respond to a request for clarification from the commission regarding an examination or failure to timely respond as a pattern of practice;

(6) assignments of MMI and/or impairment ratings overturned in a contested case hearing, appeals panel decision and/or court decision;

(7) any of the factors listed in subsection (f) of this section that would allow for denial of admission to the DDL;

(8) failure to timely successfully complete training and testing requirements as specified in subsections (b) or (c) of this section;

(9) failure to notify the commission field office of any disqualifying association within 48 hours of receiving notice of being selected as a designated doctor as a pattern of practice or conducting an examination when there is a disqualifying association;

(10) failure to maintain an active practice or failure to maintain the alternate training requirements outlined in subsection (c)(5) of this section;

(11) self-referring for treatment or becoming the employee's treating doctor for the medical condition evaluated by the designated doctor; or

(12) other significant violation of Statute and/or Rules while serving as a designated doctor.

(k) The process for notification and opportunity for appeal of a sanction is governed by §180.27 of this title (relating to Sanctions Process/Appeals) except that suspension, deletion, or other sanction relating to the DDL shall be in effect during the pendency of any appeal.

(l) The commission shall make available through its Internet website the names of:

(1) doctors on the DDL;

(2) doctors deleted or suspended from the list or otherwise sanctioned by the commission (including a description of the sanction); and

(3) doctors reinstated to the list or whose sanctions were lifted by the commission.

(m) When a doctor is added to the DDL or readmitted following a suspension or deletion, the doctor shall be placed at the bottom of the list for rotation purposes under Texas Labor Code §408.0041.

(n) The following definitions apply to this section:

(1) Active practice - a doctor has an active practice if the doctor maintains routine office hours of at least 20 hours per week for the treatment of patients.

(2) Disqualifying Association - any association which may reasonably be perceived as having potential to influence the conduct or decision of the designated doctor.

(A) A disqualifying association between a designated doctor and a party may include:

(i) receipt of income, compensation, or payment of any kind not related to health care provided by the doctor;

(ii) shared investment or ownership interest;

(iii) contracts or agreements that provide incentives, such as referral fees, payments based on volume or value, and waiver of beneficiary coinsurance and deductible amounts;

(iv) contracts or agreements for space or equipment rentals, personnel services, management contracts, referral services, or warranties, or any other services related to the management of the doctor's practice;

(v) personal or family relationships; or

(vi) any other financial arrangement that would require disclosure under §180.24 of this title (relating to Financial Disclosure).

(B) Receipt of normal payments rendered for services provided pursuant to managed care/preferred provider contracts, or any payment in accordance with the Texas Workers' Compensation Act and rules, is not a disqualifying association.

(3) Party - any of the following entities including any of their agents or representatives: the insurance carrier, health care provider (including designated doctor and treating doctor), injured employee, or employer.

(4) Self-Refer - treatment by the designated doctor or referral for treatment to another health care provider with which the designated doctor has a disqualifying association.

§180.23. Commission Required Training for Doctors/Certificate of Registration Levels.

(a) This section identifies the training requirements for doctors to be approved to provide various services within the Texas workers' compensation system.

(b) The commission, in order to ensure that injured employees (employees) have access to health care and insurance carriers (carriers) have access to evaluations of an employee's health care and income benefit eligibility, may grant a doctor exceptions to certain training and registration requirements and may allow a doctor to perform functions not normally permitted by the doctor's Level of Certificate of Registration. Such exceptions may be granted on a per request, per case basis. When an exception is granted on a per request, per case basis, the commission shall provide a copy of the approval to the carrier.

(c) Doctors on the approved doctor list (ADL) shall have a Level 1 or Level 2 Certificate of Registration.

(1) A Level 1 Certificate of Registration allows a doctor to:

(A) infrequently provide health care to employees (providing care, other than emergency or immediate post-injury medical care, to 18 Texas workers' compensation claimants or fewer per calendar year);

(B) perform utilization review or peer review functions;

(C) participate in a regional network established under Texas Labor Code §408.0221; and/or

(D) provide medical services to an unlimited number of Texas workers' compensation claimants if the doctor's medical practice is Anesthesiology - Surgical Only (excludes pain management), Radiology, or Pathology and does not, by nature, include ongoing medical management of injured employees, and the doctor requests a Non-Medical Management designation. However, this designation does not allow the doctor to perform any of the functions listed in subparagraph (B) of this paragraph.

(2) A Level 2 Certificate of Registration allows a doctor to serve in any role authorized in the Texas workers' compensation system with the exception of serving as a designated doctor unless the doctor is also on the designated doctor list which is governed by §180.21 of this title (relating to the Commission Designated Doctor List).

(d) A doctor seeking admission to the ADL shall receive training from the commission and/or a commission-approved trainer.

(e) A person or organization seeking to become a commission-approved trainer shall apply for approval in the form and manner prescribed by the commission.

(f) For each doctor trained, the commission-approved trainer shall file or provide the doctor's training information in the form and manner prescribed by the commission.

(g) Notwithstanding any other subsection of this section:

(1) a doctor not licensed in this state shall not perform utilization reviews and/or peer reviews for an insurance carrier or its agent unless the doctor performs the reviews under the direction of a doctor who:

(A) is licensed in this state,

(B) is on the ADL with a Level 2 Certificate of Registration, and

(C) has agreed to direct the doctor's reviews; and

(2) the commission may restrict or reduce a doctor's privileges or authorizations as provided in the Statute or Rules.

(h) ADL approval at a minimum requires a doctor to successfully complete commission-prescribed training prior to admission and renewal at a minimum requires a doctor to successfully complete follow-up training as required.

(1) Required training shall focus on the requirements of the Texas workers' compensation system with an emphasis on return to work, efficient utilization of care, entitlement to benefits, maximum medical improvement (MMI), and the determination of the existence of permanent impairment.

(2) Training may be completed through either self-study/distance learning (including online) or by attending training in person, as available.

(3) Application for a Level 1 Certificate of Registration requires completing the Limited Participation Doctor Training Module or other training as prescribed by the Commission in the application form. Application for a Level 2 Certificate of Registration requires completing the Doctor Training Module.

(4) Renewal of a Level 1 Certificate of Registration requires follow-up training every two years and renewal of a Level 2 Certificate of Registration requires follow-up training every four years unless the Certificate provides otherwise, the date is revised by agreed settlement pursuant to §180.26 of this title (relating to Doctor and Insurance Carrier Sanctions) or Texas Government Code §2001.056 (relating to Informal Disposition of Contested Case), Commission order or decision, or the doctor has been removed from the ADL. Follow-up training will serve as a refresher course but emphasize relevant changes in the Statute and Rules.

(i) This subsection governs authorization relating to certification of MMI, determination of permanent impairment, and assignment of impairment ratings in the event that a doctor finds permanent impairment exists when the examination of the employee occurs on or after September 1, 2003.

(1) Any doctor on the ADL, or who has been granted a temporary exception to be on the ADL pursuant to §180.20(e) or on a case-by-case basis, is authorized to determine whether an employee has permanent impairment resulting from a compensable injury. If the doctor finds that the employee does not have permanent impairment, the doctor is also authorized to certify the employee as reaching MMI.

(2) Full authorization to assign an impairment rating and certify MMI in an instance where the employee is found to have permanent impairment requires a doctor to receive commission certification by successfully completing the commission-prescribed Impairment Rating Training Module and passing the test. To remain certified, a doctor is required to successfully complete follow-up training and testing every four years.

(3) A doctor who has not completed the commission-prescribed training under subsection (i)(2) of this section but who has had similar training in the *AMA Guides* from a commission-approved vendor within the prior two years may submit the syllabus and training materials from that course to the commission for review. If the commission determines that the training is substantially the same as the commission-prescribed training and the doctor passes the commission-prescribed test, the doctor is fully authorized under this subsection. The ability to substitute training only applies to the initial training requirement, not the follow-up training.

(4) Notwithstanding any other provision of this subsection, a doctor who has not successfully completed training and testing required by this subsection for authorization to assign impairment ratings and certify MMI when there is permanent impairment may receive permission by exception to do so from the commission on a specific case basis.

(5) Full authorization under this section is one of the minimum requirements to be on the Designated Doctor List (DDL). Section 180.21 of this title governs DDL membership requirements and procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303045
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Effective date: June 5, 2003
Proposal publication date: March 14, 2003
For further information, please call: (512) 804-4287

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER G. CIGARETTE TAX

34 TAC §§3.101, 3.108, 3.110 - 3.112

The Comptroller of Public Accounts adopts the repeal of §§3.101, 3.108, 3.110 - 3.112, concerning delivery of unstamped cigarettes, cigarette tax stamps and meter impressions, issuance of cigarette tax stamps to the Texas Alcoholic Beverage Commission, affixing of cigarette tax stamps by Texas Alcoholic Beverage Commission agents, and disposition of cigarettes seized by Texas Alcoholic Beverage Commission agents, without changes to the proposed text as published in the March 21, 2003, issue of the *Texas Register* (28 TexReg 2469).

The comptroller has determined that the consolidation of rules containing similar subject matter will benefit the taxpayers by providing a more effective means of obtaining information. These sections are repealed in order to simplify their consolidation into new §3.101.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement the Tax Code, Chapter 154.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303084
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: June 5, 2003
Proposal publication date: March 21, 2003
For further information, please call: (512) 475-0387

34 TAC §3.101

The Comptroller of Public Accounts adopts a new §3.101, concerning cigarette tax and stamping activities, without changes to the proposed text as published in the March 21, 2003, issue of the *Texas Register* (28 TexReg 2470).

The comptroller has determined that the consolidation of sections of similar subject matter will benefit the taxpayers by providing a more effective means of obtaining information. Therefore, the existing §§3.101, 3.108, 3.110 - 3.112, 11.51, and 11.52 of this title are adopted for repeal. The new §3.101 consolidates the text in the current §3.101 with the text in existing §3.108 (relating to Cigarette Tax Stamps and Meter Impressions), §3.110 (relating to Issuance of Cigarette Tax Stamps to the Texas Alcoholic Beverage Commission), §3.111 (relating to Affixing of Cigarette Tax Stamps by Texas Alcoholic Beverage Commission Agents), §3.112 (relating to Disposition of Cigarettes Seized by Texas Alcoholic Beverage Commission Agents), §11.51 (relating to Evidence of Return of Cigarettes Unfit for Use), and §11.52 (relating to Importation of 200 or Fewer Cigarettes). The content of the existing sections has been updated pursuant to acts of the legislature. Previous legislation modified a provision to allow a person to transport 200 or fewer cigarettes into Texas for personal use from another state tax-free.

No comments were received regarding adoption of the new section.

This new section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements Tax Code, Chapter 154, and Health and Safety Code, Chapter 161.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303086
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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Proposal publication date: March 21, 2003
For further information, please call: (512) 475-0387

34 TAC §§3.102, 3.104, 3.106, 3.107, 3.114

The Comptroller of Public Accounts adopts the repeal of §§3.102, 3.104, 3.106, 3.107, and 3.114, concerning cigarette permits for trucks and cars, transfer and correction of permits, change of date for filing cigarette reports and payments, weight of cigarettes defined, and investigation of applicants for permits, without changes to the proposed text as published in the March 21, 2003, issue of the *Texas Register* (28 TexReg 2471).

The comptroller has determined that the consolidation of sections containing similar subject matter will benefit the taxpayers by providing a more effective means of obtaining information. These sections are repealed in order to simplify their consolidation into new §3.102.

No comments were received regarding adoption of the repeal.

These repeals are adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

These repeals implement the Tax Code, Chapter 154.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 14, 2003.

TRD-200303014
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

34 TAC §3.102

The Comptroller of Public Accounts adopts a new §3.102, concerning applications, definitions, permits, and reports, without changes to the proposed text as published in the March 21, 2003, issue of the *Texas Register* (28 TexReg 2472). The comptroller has determined that the consolidation of sections of similar subject matter will benefit the taxpayers by providing a more effective means of obtaining information.

Therefore, the existing §§3.102, 3.104, 3.106, 3.107, and 3.114 of this title are proposed for repeal. The new §3.102 consolidates the text from the current §3.102 with the text from existing §3.104 (relating to Transfer and Correction of Permits), §3.106 (relating to Change of Date for Filing Cigarette Reports and Payments), §3.107 (relating to Weight of Cigarettes Defined), and §3.114 (relating to Investigation of Applicants for Permits).

No comments were received regarding adoption of the new section.

This new section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, Chapter 154.

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-200303015
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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Proposal publication date: March 21, 2003
For further information, please call: (512) 475-0387

34 TAC §3.103, §3.109

The Comptroller of Public Accounts adopts the repeal of §3.103 and §3.109, without changes to the proposed text as published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2283).

These sections are repealed in accordance with the provisions of bills passed in previous sessions.

No comments were received regarding adoption of the repeal.

These repeals are adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement Senate Bill 862, 75th Legislature, 1997, Senate Bill 1122, 76th Legislature, 1999, and Tax Code, §154.4045.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 14, 2003.

TRD-200303013
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: June 3, 2003
Proposal publication date: March 14, 2003
For further information, please call: (512) 475-0387

SUBCHAPTER H. CIGAR AND TOBACCO TAX

34 TAC §§3.121 - 3.124, 3.126, 3.127

The Comptroller of Public Accounts adopts the repeal of §§3.121 - 3.124, 3.126, and 3.127, concerning cigar and tobacco taxes, without changes to the proposed text as published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2284).

The comptroller has determined that the consolidation of sections containing similar subject matter will benefit the taxpayers by providing a more effective means of obtaining information. These sections are repealed in order to simplify their consolidation into new §3.121.

No comments were received regarding adoption of the repeal.

This repeal is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement Tax Code, Chapter 155.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2003.

TRD-200303085
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: June 5, 2003
Proposal publication date: March 14, 2003
For further information, please call: (512) 475-0387

34 TAC §3.121

The Comptroller of Public Accounts adopts a new §3.121, concerning definitions, imposition of tax, permits, and reports, without changes to the proposed text as published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2284).

The comptroller has determined that the consolidation of sections of similar subject matter will benefit the taxpayers by providing a more effective means of obtaining information. Therefore, the existing §§3.121, 3.122 - 3.124, 3.126, and 3.127 of this title are adopted for repeal. The new §3.121 consolidates the text from the current §3.121 (relating to Delivery of Tax-Free Cigar and Tobacco Products) with the text from the existing §3.122 (relating to Permits Required for Vehicles), §3.123 (relating to Interpretation), §3.124 (relating to Transfer and Correction of Permits), §3.126 (relating to Change of Date for Filing Cigar and Tobacco Reports and Payment), and §3.127 (relating to Weight of Cigars Defined). Certain definitions have been added and the

content of the existing sections has been updated to reflect legislative changes. The Legislature expanded the definition of a commercial business location, required that a permit holder be provided with an opportunity for a hearing before a permit can be suspended or revoked, and changed the due date for the distributor's and manufacturer's monthly reports to the comptroller. The 77th Legislature added "importer" and "manufacturer" to the types of permits available under Chapters 154 and 155.

No comments were received regarding adoption of the new section.

This new section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, Chapter 155.

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-200303087
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: June 5, 2003
Proposal publication date: March 14, 2003
For further information, please call: (512) 475-0387

CHAPTER 11. CIGARETTE AND TOBACCO PRODUCTS TAX

SUBCHAPTER B. CIGARETTE TAX

34 TAC §11.51, §11.52

The Comptroller of Public Accounts adopts the repeal of §11.51 and §11.52, concerning evidence of return of cigarettes unfit for use and importation of 200 or fewer cigarettes, without changes to the proposed text as published in the March 21, 2003, issue of the *Texas Register* (28 TexReg 2473).

The comptroller has determined that the consolidation of sections containing similar subject matter will benefit the taxpayers by providing a more effective means of obtaining information. These sections are repealed in order to simplify their consolidation into new §3.101 of this title (relating to Cigarette Tax and Stamping Activities).

No comments were received regarding adoption of the repeal.

The repeal is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement Tax Code, Chapter 154.

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-200303083
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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Proposal publication date: March 21, 2003
For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION AND PLACEMENT

SUBCHAPTER A. COMMITMENT AND RECEPTION

37 TAC §85.3

The Texas Youth Commission (TYC) adopts an amendment to §85.3, concerning Admission Process, without changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3231) and will not be republished.

The justification for amending the section is to inform youth and their families about the rights and restrictions of access to the youth's records.

The amendment will clarify that upon admission, youth who are committed to the agency will be provided with a written description of the sections of the Family Code dealing with automatic restriction of records. The youth's parent or guardian will also receive a copy.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.0385, which provides the Texas Youth Commission with the authority to establish a children's assessment center.

The adopted rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200303098
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: June 8, 2003
Proposal publication date: April 18, 2003
For further information, please call: (512) 424-6301

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.61

The Texas Youth Commission (TYC) adopts an amendment to §85.61, concerning Discharge, with changes to the proposed

text as published in the April 18, 2003 issue of the *Texas Register* (28 TexReg 3232). Changes to the proposed text consist of minor grammatical corrections.

The justification for amending the section is the timely and efficient discharge of eligible youth.

The amendment will clarify that youth other than sentenced or type A violent offenders who have earned probation as a result of conduct while on parole shall be discharged. An additional change requires that youth be provided with information regarding the sealing of their records upon discharge.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to establish rules appropriate to the accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

§85.61. Discharge

(a) Purpose. The purpose of this rule is to establish criteria for discharge from agency jurisdiction for any youth committed to the Texas Youth Commission (TYC).

(b) All TYC youth shall by law, be discharged by age 21.

(c) Youth may be recommended for early discharge when specific criteria have been met. Discharge criteria shall be applied according to classification or to special circumstance. Eligibility for discharge according to classification is controlled by the most serious offense for which the youth has ever been classified.

(d) Discharge Criteria.

(1) Classification.

(A) Youth who are sentenced for an offense committed before January 1, 1996, shall be discharged from TYC jurisdiction when one of the following occurs:

(i) expiration of the sentence imposed by the juvenile court, including the time spent in detention in connection with the committing case plus time spent at TYC under the order of commitment:

(I) Time spent in detention in connection with the committing case includes all time in detention from the time of arrest for the committing offense until admission to TYC, including pre-hearing detention for adjudication/disposition of the offense or for modification of the disposition, but excluding detention time that is ordered as a condition of probation.

(II) For youth committed under concurrent determinate and indeterminate commitment orders, refer to (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders);

(ii) the youth is transferred to the Texas Department of Criminal Justice (TDJC) pursuant to an order issued by the juvenile court at a transfer hearing;

(iii) prior to age 18 if ordered by committing court; or

(iv) age 21 is reached.

(B) Youth who are sentenced for an offense committed after January 1, 1996, shall be discharged from TYC jurisdiction when one of the following occurs:

(i) expiration of the sentence imposed by the juvenile court unless under concurrent commitment orders as specified in (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders). Time on the sentence includes the time spent in detention in connection with the committing case plus time spent at TYC under the order of commitment:

(I) Time spent in detention in connection with the committing case includes all time in detention from the time of arrest for the committing offense until admission to TYC, including pre-hearing detention for adjudication/disposition of the offense or for modification of the disposition, but excluding detention time that is ordered as a condition of probation.

(II) For youth committed under concurrent determinate and indeterminate commitment orders, refer to (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders);

(ii) the youth is transferred to the Texas Department of Criminal Justice (TDCJ) consistent with (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders).

(C) Youth ever classified as type A violent offenders shall be discharged when age 21 is reached.

(D) Youth classified as a type B violent offender, chronic serious offender, controlled substance dealer, or firearms offender and never classified as type A violent or sentenced offender, shall be discharged when one of the following occurs:

(i) age 21 is reached; or

(ii) completion of 12 consecutive months on parole status in the home or home substitute and the youth:

(I) has had no delinquency adjudications or criminal convictions during the period;

(II) has no pending delinquency petitions or criminal charges;

(III) is on minimum supervision level; and

(IV) has had a positive parole adjustment, as defined in this policy.

(E) General offenders and violators of CINS probation and never classified as type A violent or sentenced offender, shall be discharged when one of the following occurs:

(i) age 21 is reached; or

(ii) completion of nine consecutive months on parole status in the home or home substitute and the youth:

(I) has had no delinquency adjudications or criminal convictions during the period;

(II) has no pending delinquency petitions or criminal charges;

(III) is on minimum supervision level; and

(IV) has had a positive parole adjustment as defined in this policy.

(2) Special Circumstances.

(A) Youth of any classification except sentenced offenders shall be discharged under the following circumstances:

(i) Court ordered reversal of commitment.

(ii) The youth being sentenced to prison.

(iii) Commitment to Texas Department of Mental Health and Mental Retardation when the minimum length of stay has been completed.

(iv) Enlistment in the military.

(v) Closing of records following a youth's death or recommitment.

(vi) Discharge by the executive director or his designee for any other reason, such as an illness or injury which prevents a youth's return to active program participation.

(vii) Youth who have completed length of stay requirements and who are unable to progress in the agency's rehabilitation programs because of mental illness or mental retardation as specified in (GAP) §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth).

(B) Youth placed out of the state who are of any classification except sentenced offender, may be discharged when requested by the placement state for satisfactory adjustment or when court action is taken by the placement state in accordance with (GAP) §85.51 of this title (relating to Interstate Compact for TYC Youth).

(C) Youth of any classification except sentenced offender and type A violent offender shall be discharged under the following circumstances:

(i) placement on adult probation for conduct which occurred while on parole status; or

(ii) court ordered placement for a minimum of 12 months in an adult correctional residential program as part of the disposition of a criminal case.

(D) Youth may be discharged for special circumstance, other than those addressed here, if approved by the executive director.

(e) Positive Parole Adjustment. For purposes of discharge, positive parole adjustment shall be shown by documentation that a youth:

(1) has completed ICP objectives including substantial completion of phase five of resocialization and community service requirements; and

(2) has, for 90 consecutive days, been:

(A) enrolled and participating in an appropriate educational or training program; or

(B) satisfactorily employed.

(f) Waiver. Youth of any classification except sentenced offender and Type A violent offender who are age 18 or older may be discharged prior to completion of discharge criteria for the purpose of obtaining services that cannot be obtained for a juvenile. Such early discharge must be justified to and approved by the deputy executive director.

(g) A youth's primary service worker (PSW) shall immediately notify the youth of the discharge. The PSW shall provide the youth a written explanation on procedures for sealing records utilizing the Sec. 58.003 Sealing of Files and Records form and a copy will be provided to the parent/guardian or custodian.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200303095
Steve Robinson
Executive Director
Texas Youth Commission
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CHAPTER 91. PROGRAM SERVICES
SUBCHAPTER B. EDUCATION PROGRAMS

37 TAC §91.41

The Texas Youth Commission (TYC) adopts an amendment to §91.41, concerning Education Administration, with changes to the proposed text as published in the April 18, 2003 issue of the *Texas Register* (28 TexReg 3232). Changes to the proposed text consist of clarifying the criteria for required enrollment in school.

The justification for amending the section is the compliance of TYC schools with statutory requirements of the Texas Education Code.

The amendment will clarify that TYC schools are accredited under the provisions of the Texas Education Code, Chapter 30, Subchapter E. Additional revisions state that youth who have completed a high school diploma or equivalent will continue to participate in reading and math instruction until they have reached 12.9 in both areas on the Test of Adult Basic Education or are released from TYC institutions. The minimum number of hours of daily instruction will increase from six to seven, and the time allowed for teacher preparation is now 45 minutes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to require youth in its care to participate in academic training and activities.

The adopted rule implements the Human Resource Code, §61.034.

§91.41. Education Administration.

(a) Purpose. The purpose of this rule is to establish basic requirements for the administration of educational services consistent with applicable federal and state laws and the educational needs of Texas Youth Commission (TYC) youth.

(b) All youth shall attend school unless staff has approved a youth over the compulsory school attendance age for alternative training or a work program. Youth under the state compulsory school attendance majority age will be enrolled in school.

(c) Institutions.

(1) TYC schools are accredited under the provisions of the Texas Education Code, Chapter 30, Subchapter E.

(2) Educational programs will comply with applicable federal and state requirements.

(3) All youth will be enrolled in an education program. Youth who have completed high school will be in a post high school training/education program and may be employed part-time. Youth who have completed a high school diploma or the equivalent will continue to participate in reading and math instruction until they have reached 12.9 on the Test of Adult Basic Education in both areas, or until they are released from TYC institutions.

(4) The principal, assistant principal, diagnostician, Reintegration of Offenders - Youth (RIO-Y) Counselor, licensed school psychologist, or qualified teacher will provide educational and vocational counseling to youth.

(5) The school schedule will include a minimum of seven (7) hours of instruction daily, including intermissions and recesses, according to the school calendar established annually by the central office education department. Four (4) of the seven (7) hours must be in core curriculum areas. Waivers for less than seven (7) hours, but not less than four (4), of school may be granted by the superintendent of education.

(6) High school graduation credit classes and/or GED preparation classes will be available to all students.

(7) Schools will provide library services for youth on campus.

(8) Schools will use available federal funds to provide required specialized education and vocational training instruction/training not available in the institution.

(9) Teaching schedule provides each teacher a minimum of 45 minutes per day for preparation.

(d) Halfway Houses and Contract Programs.

(1) Staff will ensure that all community facilities serving TYC youth have access to approved educational services.

(2) Staff will ensure that community facilities follow the guidelines established jointly by TYC and TEA for their utilizing public school services.

(e) Parole.

(1) Youth who have not received a high school diploma or high school equivalency certificate are expected to be enrolled in an education program and attending regularly.

(2) Staff will assist youth who have received a high school diploma or high school equivalency certificate in enrolling in a post secondary training/education program or in obtaining full-time employment.

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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37 TAC §91.43

The Texas Youth Commission (TYC) adopts an amendment to §91.43, concerning Basic Education, with changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3233). The changes to the proposed text consist of minor grammatical corrections.

The justification for amending the section is to ensure that special needs of youth are considered when developing their education and individual case plans.

The amendment will require that the individual case plan (ICP) developed for each youth addresses special education or English as a second language as needed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to require the youth in its care to participate in academic training and activities.

The adopted rule implements the Human Resource Code, §61.034.

§91.43. Basic Education.

(a) Purpose. The purpose of this policy is to provide for identifying a youth's basic educational needs and a means for addressing these needs.

(b) Assessment Units.

(1) The educational needs of each youth are initially assessed upon admission to the Texas Youth Commission (TYC).

(2) Individual educational records are requested from previous schools.

(3) The individual case plan (ICP) developed for each youth includes academic and vocational objectives for the youth and addresses special education or English as a second language as needed.

(c) Institutions.

(1) The institution continues to develop and implement the ICP with modifications to address special needs, if applicable.

(2) TYC follows Texas Education Agency (TEA) policies in identifying youth for special education services and in providing the designated services.

(3) The basic education program includes reading, language arts, math, science, social studies, computer literacy or information technology system, and GED preparation courses. As needed, a youth is scheduled for special education, remedial education, English as a second language, advanced academic, and prevocational or vocational courses.

(4) Teachers provide competency based instruction to all youth.

(5) Library materials meet approved educational, informational and recreational needs and interests of youth.

(6) Youth are enrolled in TEA approved or post-secondary courses and have an opportunity to receive credit or partial credit for the courses.

(7) Youth who complete all TEA requirements for high school graduation while enrolled in a TYC school may graduate from the TYC school.

(8) Age appropriate and capable youth who express interest in obtaining a high school equivalency diploma participate in GED

preparatory programs and have an opportunity to complete GED testing.

(9) Youth complete progress tests at designated dates to determine their improvement since completing admission testing.

(10) A youth's educational participation and progress are considered in decisions regarding the youth's privileges and progress toward release.

(d) Halfway Houses and Contract Programs.

(1) TYC educational assessment information is shared with the serving public school.

(2) The serving public school is responsible for completing additional assessments, as needed, including special education review and admission procedures.

(3) Appropriate academic and vocational course assignments are determined by the youth's school. Facility staff confer with school officials to advocate for appropriate assignments.

(4) Daily study time and tutorial assistance are provided to youth in the facility.

(5) A youth's educational participation and progress are considered in decisions regarding the youth's privileges and progress toward release.

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 95. YOUTH DISCIPLINE
SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.21

The Texas Youth Commission (TYC) adopts an amendment to §95.21, concerning Aggression Management Program, with changes to the proposed text as published in the April 18, 2003 issue of the *Texas Register* (28 TexReg 3240). Changes to the proposed text consist of one minor grammatical correction

The justification for amending the section is the safe and effective management of dangerously aggressive behavior exhibited by youth assigned to a Texas Youth Commission institution.

The amendment will establish new criteria for progression through the stages of the program and release from the program. Additional minor revisions provide clarification to admission criteria.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075 Determination of Treatment, which provides the Texas Youth Commission with the authority to establish special needs treatment programs and criteria for confinement under conditions which best serve the welfare of youth and protection of the public.

The adopted rule implements the Human Resource Code, §61.034.

§95.21. Aggression Management Program.

(a) Purpose. The purpose of this rule is to provide criteria for removing from the general population youth assigned to a Texas Youth Commission (TYC) institution for dangerously aggressive behavior and placing a youth in the Aggression Management Program (AMP). The goal of the program is to safely manage and treat the aggressive behavior in a self-contained unit. The AMP program will be used for youth who have not been responsive to other less restrictive interventions and pose a continuous threat of danger to other youth and/or staff. The AMP is a highly structured program designed to address aggressive behavior modification and provide a system of graduated reintegration into the general population. Placement in the AMP is a major disciplinary consequence.

(b) Authorized Facilities.

(1) The McLennan County State Juvenile Corrections Facility (MCSJC) in Mart, Texas is the only facility authorized to administer the AMP.

(2) TYC contract programs shall not develop an AMP. TYC contract programs shall not place TYC youth residing in the contract program in the TYC AMP program.

(c) Eligibility Criteria. Any youth, other than females or sentenced offenders eligible for transfer to the Institutions Division of the Texas Department of Criminal Justice (TDCJ), are eligible for the AMP.

(1) A level I or II hearing has been held and a finding made that the youth engaged in eligible conduct for the AMP with no extenuating circumstance; and

(2) The youth committed, attempted to commit, or helped someone else commit at least one of the following offenses:

(A) assault resulting in substantial bodily injury (involving more than a passing discomfort or fleeting pain); or

(B) an assault causing bodily injury on three separate occasions over a 90-day period and the second and third assaults were each committed after a level I or II hearing disposition had been made for the previous assault; or

(C) intentionally participated in a riot that caused bodily injury or property damage of over $500.00; or

(D) used or attempted to use either an object defined as a weapon by the Penal Code or an object that could be used as a weapon, which placed the victim in fear of imminent bodily injury.

(3) If the disposition at the level I or II hearing held pursuant to this policy resulted in a transfer to AMP, but bed space is not available, the youth will be assigned to a placement in the Behavior Management Program (BMP) pending admission to AMP (at the youth's current placement) with an assigned maximum length of stay. However, if the youth completes the maximum length of stay in the BMP prior to admission to AMP, the youth shall not be admitted to AMP as a result of the conduct determined at the level II hearing that resulted in the current assignment to BMP.

(d) Admission Decision Process.

(1) The local AMP Admission Review Committee at the MCSJC facility is composed of at least the assistant superintendent, AMP psychologist, and the AMP program administrator. The facility psychiatrist shall review admission decisions for youth with a psychiatric history.

(2) The AMP Admission Review Committee shall approve admission to the AMP based on the following considerations:

(A) current mental health assessment that indicates there is no therapeutic contraindication to placement in the AMP;

(B) documentation that less restrictive interventions have been attempted without successfully reducing the behavior and that the AMP represents the least restrictive available and appropriate intervention; and

(C) a finding of true of eligible conduct in a level I or II hearing.

(3) The AMP Admission Review Committee shall not approve admission to the AMP for a youth who was placed in BMP pending admission to AMP if the maximum length of stay assigned for that BMP placement has been completed.

(4) The AMP Admission Review Committee has discretion whether or not to approve admission to the AMP if a youth has substantially completed a placement in BMP without an incidence of aggression.

(5) Priority is given to youth with the most dangerous and chronic aggressive behavior, greater frequency of the use of weapons, and older age.

(e) Release from AMP.

(1) Program Completion Requirements.

(A) Youth are released from AMP upon successful completion of the following requirements:

(i) stages I through V of the AMP:

(I) Stage I. Youth must complete a minimum of 15 consecutive days without an aggressive act or credible threat of one; and

(II) Stages II - V. Youth must:

(-a-) complete a minimum of 30 consecutive days on each stage without an aggressive act or credible threat of one; and

(-b-) have 30 days on each stage of program compliance; and

(-c-) have completed phase A-2, B-2, C-2; and

(ii) at least phase A-2, B-2, C-2. Youth may not achieve higher than phase A-4, B-2, C-2 in stages I-III and phase A-4, B-2, C-3 in stages IV-V.

(B) Program compliance is defined as completion of the resocialization phases (phase components) required for each of the stages as specified in this policy.

(i) Progress is based on successful completion of the ICP objectives established in each of the five stages of AMP.

(ii) Progress is assessed by the AMP treatment team consisting of the youth's primary service worker (PSW), AMP program administrator, AMP psychologist, juvenile corrections officer (JCO) staff, and teacher (or representative of education department). Additional members may be appointed to the team as needed.

(iii) The treatment team will staff youth weekly to review progress in the behavioral and treatment objectives.

(iv) The treatment team will determine the appropriate stage for each youth using compliance with ICP objectives as the criteria. A youth may be retained on or promoted to the next stage based on completing ICP objectives. However, youth may be assigned to a lower stage based only on specific acts of aggressive behavior or loss of Behavior phase in resocialization. The treatment team shall document the reasons used to support their decisions and may make recommendations for modification of the treatment objectives or strategies.

(v) The treatment team will conduct assessments to determine the youth's resocialization phase at least every 30 days.

(C) The AMP treatment team will determine when a youth has successfully completed all the criteria for release from the AMP; and the youth shall be released from AMP.

(D) The youth will return to the facility that initiated the commitment to AMP. If there are compelling circumstances to prevent the youth from returning to the committing facility, the committing facility will notify the appropriate director of juvenile corrections. The appropriate director of juvenile corrections will make a determination of the appropriate placement.

(2) Mental Health Review.

(A) Youth with neurological, and/or emotional disturbance, and/or psychiatric disorder may be temporarily admitted to the Corsicana Stabilization Unit (CSU) pursuant to (GAP) §87.67(c)(3) of this title (relating to Corsicana Stabilization Unit) for diagnostic purposes to determine appropriate placement in AMP or CSU.

(B) Youth may be released from AMP at any time for mental health reasons based on a recommendation by the AMP psychologist or psychiatrist and approved by the director of clinical services at MCSJC facility.

(f) Stage Requirements and Conditions. A youth obtains stages in the AMP based upon the following criteria.

(1) Stage I.

(A) Youth must complete 15 consecutive days without an aggressive act or the credible threat of one.

(B) Youth are confined to single occupancy rooms except for periods of highly supervised and structured activity in the self-contained unit.

(C) Youth will spend at least two (2) hours a day out of the locked room in a structured activity following the daily program.

(2) Stage II.

(A) Youth must complete 30 consecutive days without an aggressive act or credible threat of one.

(B) Youth must have 30 days of program compliance including successful completion of three (3) of the five (5) indicators for the Correctional Therapy Phase C-1 main objective located in the ABC's of Phase Assessment, C1 page 4. The required three (3) main objective indicators are as follows:.

(i) indicator 1: define a Life Story;

(ii) indicator 2: define Offense Cycle; and

(iii) the third indicator can be any of the remaining indicators for the main objective.

(C) Youth must have 30 days of program compliance including successful completion of three (3) of the five (5) sub-objectives

located in the ABC's of Phase Assessment, C1 page 4. The required three (3) sub-objectives are as follows:

(i) sub-objective: Thinking Errors to include indicator 1;

(ii) sub-objective: Empathy to include indicator 1; and

(iii) the third sub-objective to include indicator 1 can be any of the remaining sub-objectives excluding Layout. The Layout must be the last sub-objective to be completed.

(D) Youth must maintain the Behavior Phase B-1 behavior objectives located in the ABC's of Phase Assessment, B1 page 2.

(E) Youth must complete the Academic/Workforce Development Phase A-1 main and sub-objective located in the ABC's of Phase Assessment, A1 page 2.

(F) Youth are confined to single occupancy rooms except for periods of specific, highly supervised, and structured activities with limited numbers of other youth in the self contained program.

(G) Youth will spend up to four (4) hours a day out of the locked room in structured activities following the daily program.

(3) Stage III.

(A) Youth must complete 30 consecutive days without an aggressive act or credible threat of one.

(B) Youth must have 30 days of program compliance including successful completion of all Academic/Workforce, Behavior and Correctional Therapy of Phase 1 with the Layout sub-objective the last to be completed.

(C) Youth are confined to single occupancy rooms except for periods of specific, highly supervised, and structured activities with limited numbers of other youth in the self contained program.

(D) Youth will spend up to six (6) hours a day out of the locked room in structured activities following the daily program.

(4) Stage IV.

(A) Youth must complete 30 consecutive days without an aggressive act or credible threat of one.

(B) Youth are confined to self-contained program and closely supervised.

(C) Youth begin transition to the general population by attending campus school for half a day and complete all school assignments for specific periods.

(D) Youth must complete three (3) of the four (4) indicators for the Correctional Therapy Phase C-2 main objective located in the ABC's of Phase Assessment, C2 page 4. The required three (3) main objective indicators are as follows:.

(i) indicator 1: accurately discusses significant life events;

(ii) indicator 3: identifies significant unmet needs; and

(iii) the third indicator can be any of the remaining indicators for the main objective.

(E) Youth must complete three (3) of the five (5) sub-objectives, excluding the Layout sub-objective that must be completed last, located in the ABC's of Phase Assessment, C2 page 4.

(F) Youth must complete the Academic/Workforce Development Phase A-2 main and sub-objective located in the ABC's of Phase Assessment, A1 page 2.

(G) Youth must maintain the Behavior Phase B-2 behavior objectives located in the ABC's of Phase Assessment, B1 page 2.

(H) Youth will spend up to eight (8) hours a day out of the locked room in structured activities following the daily program..

(5) Stage V.

(A) Youth must complete 30 consecutive days without an aggressive act or credible threat of one.

(B) Youth must successfully complete all main objectives and sub-objectives to include the Layout sub-objective of Academic/Workforce and Correctional Therapy phase 2 of the ABC's of Phase Assessment. The Behavior Phase 2 objectives must be maintained.

(C) Youth will participate in regular scheduled activities in the general population during the day.

(D) Youth will spend up to 14 hours a day out of the locked room in structured activities following the daily program.

(g) Program Components.

(1) Confined to Rooms. Youth will be confined in their rooms at all times unless otherwise provided for in this policy or if they engage in aggressive or inappropriate conduct.

(2) Use of Mechanical Restraints. Approved and appropriate mechanical restraints may be used on youth on stage I while not confined to their rooms.

(3) Locked Doors. Doors to individual rooms may be locked when youth are confined to the rooms.

(4) Individual Case Plan. Within the first week of admission to AMP, an ICP will be developed for each youth. The plan will consist of behavior modification strategies and treatment objectives necessary to reduce aggressive behavior. The ICP shall be developed and reviewed according to case management standards.

(5) Education Component. All youth are expected to participate in an individualized educational program for a minimum of four (4) hours per day. Youth that were enrolled in a special education program shall have a temporary Admission Review and Dismissal (ARD) Committee meet and enroll the youth in special education services.

(6) Individual Counseling.

(A) Youth in stage I will receive at least one (1) hour a week of individual counseling from either the PSW or unit psychologist.

(B) Youth in stage II will receive at least 30 minutes a week of individual counseling from either the PSW or AMP psychologist.

(C) Youth on stages III -V shall receive individual counseling according to case management standards.

(7) Group Therapy.

(A) Group therapy will be offered on stages I-III in the AMP. The emphasis will be on individual Correctional Therapy phase 1 resocialization work in stages I and II and on core group in stage III.

(B) On stages IV and V, the youth will attend core groups.

(8) Behavior Management. Youth are expected to follow their prescribed schedules and commit no rule violations per (GAP) §95.3 of this title (relating to Rules of Conduct). Youth will be entitled to earn privileges within the AMP with progression through the AMP stages and resocialization phases.

(9) Physical Exercise.

(A) Large muscle exercise will be offered to youth daily and will be offered in an exercise yard if safety permits.

(B) On stage IV and V physical exercise may be held on the general campus.

(10) Medical and Psychological Treatment.

(A) The AMP psychologist will continually assess the mental status of youth to identify any therapeutic contraindications for continued confinement on the unit. If such indications are assessed and with approval by the director of clinical services, the youth shall be released from AMP.

(B) Youth will be seen by medical and/or psychiatric staff as needed, and treatment will be provided as ordered.

(h) Program Monitoring and Youth Rights.

(1) Youth will be seen daily by a caseworker.

(2) Youth will be offered the opportunity to meet with the assistant superintendent weekly.

(3) The AMP will be visited daily by the superintendent or assistant superintendent (or their designees) and the director of clinical services or his/her designee.

(i) Independent Review.

(1) If a youth remains on any one stage for more than 45 days, his/her case shall be reviewed by an Independent Review Team (IRT). The IRT shall continue to review the case every 45 days after the initial review until the youth progresses to the next stage.

(2) The IRT shall include the assistant superintendent and the director of clinical services. Additional members may be appointed as needed.

(3) The IRT reviews the justification and documentation of the reasons the youth has failed to progress in the program stages and to determine if appropriate interventions are being provided to the youth. The IRT may direct changes in the youth's individual case plan to enhance the youth's ability to progress in the program stages.

(j) Appeal The youth shall be notified in writing of his/her right to appeal to the executive director. See (GAP) §93.53 of this title (relating to Appeal to Executive Director). The pendency of an appeal shall not preclude implementation of the decision.

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 99. GENERAL PROVISIONS
SUBCHAPTER A. YOUTH RECORDS

37 TAC §99.11

The Texas Youth Commission (TYC) adopts an amendment to §99.11, concerning Youth Masterfile Records, with changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3245). A change was made to clarify TYC by spelling Texas Youth Commission (TYC).

The justification for amending the section is to clarified the terminology relating to youth records and how the records will be maintained throughout TYC residential programs.

The amendment will ensure all TYC and contract facilities and programs use the correct terminology relating to youth records and how the records are maintained.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.073, which provides the Texas Youth Commission with the authority to keep written records of all examinations, treatment, and disposition of each youth in its care.

The adopted rule implements the Human Resource Code, §61.034.

§99.11. Youth Masterfile Records.

(a) Purpose. The purpose of this rule is to establish a system for youth records containing accurate and complete records of commitment documents, assessment reports, and significant decisions and events regarding the youth.

(b) Applicability.

(1) See (GAP) §99.9 of this title (relating to Access to Youth Records).

(2) See (GAP) §99.1 of this title (relating to Confidentiality Regarding Youth Alcohol and Drug Abuse).

(3) See (GAP) §99.19 of this title (relating to Youth Record Disposition).

(c) Masterfile Description. The official records maintained for each youth is called the masterfile. It physically consists of four (4) separate file folders called the security subfile, the incident subfile, the casework subfile, and the medical subfile.

(d) Files shall be stored and transported in a manner that ensures security and confidentiality.

(e) Youth masterfiles shall remain in the custody and control of authorized personnel at all times. Authorized personnel are Texas Youth Commission (TYC) staff or staff under contract with TYC to provide parole services.

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 9. TEXAS DEPARTMENT ON AGING

CHAPTER 260. AREA AGENCY ON AGING ADMINISTRATIVE REQUIREMENTS

40 TAC §§260.1 - 260.3, 260.11, 260.15, 260.17, 260.19

The Texas Department on Aging (TDoA) adopts the amendments contained in Chapter 260 (§§260.1-260.3, 260.11, 260.15, 260.17 and 260.19) in accordance with the Government Code, 2001.039. Sections 260.1, 260.3, 260.15, 260.17 and 260.19 are adopted without changes to the proposed text as published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2291) and will not be republished. Sections 260.2 and 260.11 are adopted with changes to the proposed text as published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2291). The text of the rules will be republished. The changes were recommended by a workgroup comprised of TDoA staff and Area Agency on Aging staff. The initial changes were made to remove areas no longer pertinent and to add areas to bring the rules in compliance with changes in federal statute.

Changes in the adopted amendments respond to public comments or otherwise reflect non-substantive variations from the proposed amendments. The following entities furnished written comments on the proposed amendments: Texas Association of Area Agencies on Aging (TAAAA) and the South East Area Agency (SETAAA) on Aging along with the Texas Department on Aging's (TDoA) responses.

§260.2. Area Agency on Aging Fiscal Responsibilities.

§260.2 (i)(6)

Comment from TAAAA: Allow the area agencies on aging to reference all relevant sections of the Texas Administrative Code that may be reviewed electronically without physically printing each section and attaching to the contract.

Response: TDoA inserted "reference in the" and removed "attach to the subcontractor/service provider contract" from the first sentence.

§260.11. Ombudsman Services.

§260.11, (a)(6)

Comment from the TAAAA: Testing should not be mandatory for becoming a Volunteer Certified Ombudsman because the required testing creates an extra burden on the Volunteer Ombudsman.

Response: The amendment deletes the words "and test" from the language. The remaining proposed language "training as prescribed by the office" is a sufficient structure to assure that volunteers are competent to carry out the ombudsman function.

§260.11, (f)(F)(4)

Comment from TAAAA: "Require the managing local ombudsman to attend all continuing education training" should be removed. The number of hours of training should not exceed those hours required for certification. It is not within the purview of the State Ombudsman to grant excuses and attendance at Ombudsman trainings would be determined by funding availability; and the training and continued education for local managing ombudsman should not exceed the requirement for the certification.

Comment from SETAAA: The AAA has concerns of the travel costs incurred in the Ombudsman training given the current budget concerns and hoped combining four training sessions into one and exploring alternative methods of training could be effective. The AAA also expressed a concern over the issue of mandatory compliance and the issuance of excused absences by the Ombudsman office. The recommendation is that the word "required" and the phrase "if excused from attending by the Office" be removed from the rule.

Response: Training will be developed and scheduled based on the needs of the 28 AAA based programs. The Ombudsman division has scheduled two stand-alone training sessions for AAA Ombudsman staff for 2004. It is anticipated that AAAs will support Ombudsman staff to participate in these events. Future year training events will be included both in-person and video/web based events as technology becomes available and is more cost-effective. Since the change deletes the entire section, subsequent sections were renumbered.

§260.11, (f)(F)(7)C:

Comment received from TAAAA: The Association asked the following be removed from the rule "require the completion of a criminal background check of all volunteer and paid staff ombudsman prior to certification." It was felt TDoA had not provided a means to obtain the checks, and confidential issues had not been addressed.

Response: It is the Agency's belief that a background check is necessary on all new volunteers and staff coming into the program after September 1, 2003 in order to provide the assurances to the public that the Agency is protecting the rights of vulnerable older persons served by the ombudsman program. The background checks are similar to the ones already being performed on Certified Nursing Aides by the Texas Department of Public Safety. Any confidential issues would be protected by state statute, as enacted by the 78th Texas Legislature. The Agency will provide the AAAs with a procedure to obtain criminal background information from the Texas Department of Public Safety.

The amendments are adopted under the Texas Human Resources Code §101.021, which provides the Texas Department on Aging with the authority to adopt rules governing the functions of the Department.

§260.2. Area Agency on Aging Fiscal Responsibilities.

(a) Purpose. An area agency on aging shall demonstrate and maintain fiscal integrity in order to comply with the requirements of the Governing Documents as listed in §254.3 of this title (relating to Governing Documents); all Texas Department on Aging Rules; the Department's policies related to the Cash Management Improvement Act, 31 Code of Federal Regulations Part 205, a Treasury-State agreement;

and with all state and local laws as pertains to the financial operation of an area agency on aging. Policies, procedures, standards, program instructions, and technical assistance memorandums shall be promulgated by the Department, as necessary, in order to support and interpret these rules and laws. The Department shall be the final authority in determining how these interpretations shall pertain to programs for older persons. The area agency on aging shall comply with the following financial criteria.

(b) Purchases. All purchases of service, materials, equipment and goods made with grant funds shall follow the criteria of allowability as prescribed in the Uniform Grant Management Standards, as adopted by the Governor's Office of Budget and Planning, including OMB Circulars A-87 or A-122, as applicable, and the following.

(1) All purchases shall have been made by actual receipt of the service or merchandise or issuance of a purchase contract, voucher, or other legal document that binds both parties to the transaction, no later than the last day of the grant period for which funds have been budgeted and encumbered.

(2) Actual receipt of the service or merchandise and payment shall be made prior to the due date of the closeout report for the grant period for which funds have been budgeted and encumbered.

(3) Any service or merchandise placed on order in a fiscal program year, in accordance with subsection (a) of this section and not meeting the criteria in subsection (b) of this section, shall be paid for with funds awarded for the fiscal year in which the service or merchandise was actually received and/or payment made.

(c) Independent Audit.

(1) An area agency on aging receiving more than $300,000 in federal or state funding from all sources shall provide an audit in accordance with the standards for financial and compliance audits contained in the Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the U.S. General Accounting Office; the Single Audit Act of 1984, including all updates and revisions; the provisions of OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations, as applicable, and the Uniform Grant Management Standards.

(2) The audit shall cover the entire organization and be conducted in accordance with generally accepted auditing standards. Additionally, audits shall be conducted in accordance with audit guidelines promulgated by the Department, or the Single Audit Manager's Forum (SAMF) or other authoritative source with prior written approval from the Department.

(3) The area agency on aging shall provide and furnish the Department with an annual audit by an independent certified public accounting firm in accordance with OMB Circular A-133 within 30 calendar days following receipt of such audit, but in no case more than 9 months following the end of the area agency on aging's fiscal year end that the audit covers.

(4) An area agency on aging shall require all subcontractors to adhere to paragraphs (1) and (2) of this subsection, relating to the requirements for an independent audit in accordance with OMB Circular A-133.

(d) Indirect Costs Allocation Plan.

(1) The area agency on aging shall have an Indirect Costs Allocation Plan approved in accordance with the Uniform Grant Management Standards. Documentation of compliance with the above must be submitted to the Department for any period covered under this contract no later than the first of September immediately proceeding the contract period.

(2) An Indirect Costs Allocation Plan shall be submitted for approval to the Department by all area agencies on aging for whom the Department is the designated state coordination agency, no later than 60 days before the beginning of the contract period.

(3) All Indirect Costs Allocation Plans submitted to the Department for approval must have sufficient detail, as defined by the Department, to allow proper evaluation of the plan.

(e) Disallowance of Costs.

(1) In accordance with OMB Circular A-133 and Uniform Grant Management Standards, determination shall be made by independent audit and/or monitoring visit by the Department relating to the allowable use of federal, state and matching credit funds in accordance with OMB Circulars A-87, A-122 and other applicable laws, regulations and circulars promulgated by recognized authoritative bodies.

(2) Costs found to be unallowable, in accordance with those referenced in paragraph (1) of this subsection, relating to the allowable use of funds, shall be designated as questioned costs.

(3) To recover unresolved questioned costs revealed in an audit or monitoring visit, the Department will send to the area agency on aging a Letter of Notification of Disallowance with Intent to Recover Costs by certified or registered mail, return receipt requested within 60 calendar days following the failure to resolve all such questioned costs. The 60 calendar day period shall begin the next day following the six months allowed for resolution in accordance with OMB Circular A-133.

(4) Notification of disallowance resulting from questioned costs revealed during an independent audit or monitoring visit shall be issued by the Department.

(5) The area agency on aging shall resolve all findings and questioned costs within six months of receipt of the audit or notice of questioned costs unless an extension has been granted as directed by the Department.

(6) The area agency on aging shall be liable to the Department for any costs disallowed as a result of unresolved questioned costs revealed during an audit or monitoring visit relating to aging programs and/or expenditures.

(7) Failure of the area agency on aging to timely secure an acceptable independent audit from a subcontractor, when required by law, shall be subject to the disallowance provisions of this section to the same extent as disallowance based on overpayment of funds or other questioned costs.

(8) Disallowance resulting from non-receipt of required subcontractor audits shall be resolved in the same manner as if revealed by an independent audit or a monitoring visit.

(f) Recapture of Payments.

(1) Recapture of payment may occur when costs have been disallowed by the Department, or if the area agency on aging has received funds in excess of those actually earned. The Department may take appropriate action including requiring the repayment of and/or withholding of funds in such cases that overpayment has occurred.

(2) Any area agency on aging having funds recaptured because of a disallowance, in accordance with subsection (e) relating to disallowance, shall waive all rights to such funds and shall not receive any of the funds as part of a future allocation.

(g) Contract Certifications. Certifications required of all area agencies on aging include but are not limited to:

(1) Debarment and Suspension.

(A) The area agency on aging shall not knowingly deal with any person, business or other entity which has been suspended or debarred from receiving federal funds under 45 Code of Federal Regulations §76.200, concerning non-procurement, or 45 Code of Federal Regulations, Part 1229, Government wide Debarment and Suspension (Non-procurement) and Government wide Requirements for Drug-Free Workplace (Grants).

(B) For each federal fiscal year the area agency on aging shall secure a Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts and Grants from any potential subcontractor, of any tier, for which such certification is required, prior to issuing any award, grant or contract.

(2) Americans with Disabilities Act. The area agency on agency shall not purchase services from any subcontractor not in compliance with the provisions of the Americans with Disabilities Act.

(h) Budget Submissions.

(1) An area agency on aging, on an annual basis, shall submit a budget in a format directed by the Department, which reflects the approved area plan.

(2) An amended budget must be submitted to and approved by the Department prior to implementation of the amended budget.

(3) Budget submissions shall be due to the Department no later than 45 days following the date of notification to the area agency on aging.

(i) Contracting.

(1) The authority for the area agency on aging to enter into service provider contracts is based on the Older Americans Act of 1965, as amended; HHS regulations on Administration of Grants; Title 45 Code of Federal Regulations, Part 74; Title 45 Code of Federal Regulations, Part 92; Title 45 Code of Federal Regulations, Part 1321, et seq.; Title 45 Code of Federal Regulations, Part 91; and all policies and rules established by the Department; and with all state and local laws as they pertain to contracting and reimbursement methodologies. The area agency on aging and all subcontractors/service providers shall comply therewith.

(2) When purchasing services, the area agency on aging shall use the following cost determination methodologies for the purchase of goods and services. These methodologies are known as cost reimbursement, performance based unit rate and variable unit rate.

(A) Cost Reimbursement. In cost reimbursement contracts, the area agency on aging pays the subcontractor on a reimbursement basis for services rendered. Reimbursement shall not be adjusted to offset poor management planning. Adjustments to the share of expenses that federal and/or state funds will pay must be requested in writing by the subcontractor/service provider and may only be considered by the area agency on aging in instances where:

(i) a subcontractor experiences significant operating losses due to events over which they have no control or reasonably could not have anticipated; or

(ii) a subcontractor experiences excess revenues over operational costs due to unanticipated, and/or unbudgeted additional resources; or

(iii) reductions in expenses due to a change in cost allocation methodology.

(B) Fixed Unit Rate. In performance based unit rate contracting, the area agency on aging agrees to pay the subcontractor/service provider in the amounts and upon the terms, provisions and budgets as set forth in its contract with the subcontractor/service provider as a result of negotiation of a suitable unit rate. The subcontractor/service provider agrees to deliver specific services on an at-risk basis.

(C) Variable Unit Rate. Variable unit rate contracting allows for rate variation that is specific to a unit of service. This method would be used primarily for services such as health maintenance and residential repair but is not limited to these services.

(3) Direct Purchase of Services. Direct purchase of services contracting allows for the purchase of service(s) on a client-by-client basis. Direct purchase of services requirements are identified in §260.19 of this title (relating to Direct Purchase of Services).

(4) Sole Source Procurement. The sole source procurement method may be used only when the award of a contract is not feasible under the other procurement methods. In this event, the area agency on aging shall comply with the procedures established in 45 Code of Federal Regulations Part 92.36(d)(4), concerning procurement by noncompetitive proposals.

(5) Competitive Bidding. Area agencies on aging shall comply with competitive bidding procedures to promote fair and open competition in the procurement process through the use of formal bidding, informal bidding or competitive proposals, as appropriate. Documentation shall be maintained by the area agency on aging to demonstrate all such efforts.

(6) The area agency on aging shall reference in the subcontractor/service provider contract, all relevant sections of the Texas Administrative Code relating to the service(s) provided regardless of the procurement process used.

(7) All subcontractor/service provider contracts shall require a subcontractor/service provider to have an accounting system which identifies all costs for each specific service being purchased or provided and which complies with 45 Code of Federal Regulations, Section 1321, Subpart D.

(j) Service Match.

(1) In order to meet the match requirements of the Older Americans Act, 1965, as amended, Section 304(d), area agencies on aging and their service providers shall provide a minimum of non-federal match funds for the cost of all Older American Act services.

(2) The non-federal share of service funding shall be in cash or in kind.

(3) In-kind shall be based on fair market value of the services and goods.

(k) Area Agency on Aging Administrative Match.

(1) In order to meet the match requirements of the Older Americans Act, 1965, as amended, Section 304(d), area agencies on aging shall provide a minimum of 25% non-federal match funds for the cost of administration of area plans.

(2) The non-federal share of service funding shall be in cash or in kind.

(3) In-kind shall be based on fair market value of the services and goods.

(l) Program Income.

(1) Program income contributions shall be administered in accordance with 45 Code of Federal Regulations, Part 1321.67; 45 Code of Federal Regulations, Part 92.25; and the Uniform Grant Management Standards.

(2) Cost Reimbursement. Reimbursement shall not be made in excess of actual allowable expenses less program income received during the reimbursement period.

(3) Fixed or Variable Unit Rate. Program income received shall not be deducted from the amount paid to subcontractor/service provider.

(4) Direct Purchase of Services. When an area agency on aging or other designated access and assistance service provider purchases services using the direct purchase of service methodology, program income must be collected, accounted for and used to support and enhance services provided by the area agency on aging.

(m) Adequate Proportion.

(1) Each area agency on aging shall establish and meet an adequate proportion of funding they receive under Title III, Part B, of the Older Americans Act, 306(a)(2), as amended, for support services in the budget.

(2) Adequate proportion of funding for support services shall include each of the following support services categories and their designated services:

(A) Services associated with access to services (Transportation, Information, Referral and Assistance and Care Coordination);

(B) in-home services (homemaker and home health aides, visiting and telephone assurance, chore maintenance and supportive services for families of older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction); and

(C) legal assistance.

(3) An area agency on aging may propose a change in the local adequate proportion funding level for any of the support service categories through written request to the Department prior to the beginning of the fiscal year.

(4) An area agency on aging may seek a waiver from the Department for setting and expending an adequate proportion of Title III, Part B funds for support service categories.

(A) At least one public hearing shall be held on the area plan or area plan amendment containing a request for waiver of adequate proportion. The area agency on aging shall notify all interested parties in the area of the public hearing and provide them with an opportunity to testify.

(B) The area agency on aging shall provide appropriate justification to demonstrate an adequate supply of a specified support service is available to meet the needs of the service area.

(C) Separate waiver requests shall be submitted for each category of support services for which a waiver is sought.

(n) Ombudsman Maintenance of Effort. Area agencies on aging shall meet the requirements for maintenance of effort for ombudsman activities as defined in the Older Americans Act §306 (a)(9).

§260.11. Ombudsman Services.

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

(1) Advocacy--Actions by or on the behalf of individuals and groups to ensure that they receive the benefits and services to which they may be entitled, and to ensure that their rights guaranteed by law are protected and enforced.

(2) Advocacy plan--An action plan developed to address the needs and quality of care issues of residents that are developed at the state, regional and individual nursing home levels.

(3) Assisted Living Facility--An establishment, including a board and care home, that furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment and provides personal care services under the scope of Health and Safety Code, Chapter 247.

(4) Board--The Board on Aging of the Texas Department on Aging.

(5) Certified staff ombudsman--An individual who has successfully completed the required certification training as prescribed by the Office and who has been recommended by the local ombudsman entity and approved by the State Long-Term Care Ombudsman to serve as an advocate for long-term care facility residents and who has been hired by the local ombudsman entity as paid staff to participate in the administration of the ombudsman program. A certified staff ombudsman shall be a representative of the Office.

(6) Certified volunteer ombudsman--An individual who has successfully completed the required certification training as prescribed by the Office and who has been recommended by a local ombudsman entity and approved by the State Long-Term Care Ombudsman to serve as an advocate for long-term care facility residents and participate in the ombudsman program. A certified volunteer ombudsman shall be a representative of the Office.

(7) Clients or recipients of services--Residents of long-term care facilities.

(8) Contractor--The performing entity in a contract with the Department. The word contractor when used in this rule and related policies and procedures is synonymous with grantee or other entities as defined by the Board, by rule or order.

(9) Conflict of interest--Status of an individual applying to be a certified volunteer ombudsman must be revealed to the Office of the State Long-Term Care Ombudsman and resolved prior to service. A conflict of interest exists if an individual applying to be a certified volunteer ombudsman or an immediate family member (first degree of consanguinity or affinity) of that individual has any one or more of the following:

(A) direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(B) ownership or direct investment interest in a long-term care service;

(C) is employed by or participates in the management of a long-term care facility;

(D) receives or has the right to receive, directly or indirectly, remuneration under a compensation arrangement with an owner or operator of a long-term care facility; or

(E) has a family member residing in a long-term care facility in which the representative is assigned or provides advocacy.

(10) Department--The Texas Department on Aging, the single state agency for Older Americans Act programs.

(11) Friendly Visitor--A volunteer who has a relationship with the local ombudsman entity but who does not participate in complaint resolution. A Friendly Visitor receives orientation and training as prescribed by the Office but does not receive certification, is not a representative of the Office and shall not have access to resident records.

This is an optional program operated at the discretion of the local ombudsman entity.

(12) In-service--A planned educational effort conducted or coordinated by professional staff or certified volunteers.

(13) Local ombudsman entity--An area agency on aging or other entity, as defined by the Board, by rule or order which is responsible for implementation of all aspects of the local ombudsman program as defined in these rules.

(14) Long-term care facility--A facility that is licensed or regulated or that is required to be licensed or regulated by the Texas Department of Human Services.

(15) Managing local ombudsman--The professional staff person at the regional level who directs the local ombudsman program. A managing local ombudsman is a certified staff ombudsman and shall be a representative of the Office.

(16) Nursing home--An institution that provides organized and structured nursing care and service, and is subject to licensure under the Health and Safety Code, Chapter 242.

(17) Office--The Office of the State Long-Term Care Ombudsman, an independent division of the Texas Department on Aging.

(18) Ombudsman intern--A volunteer who has been admitted to the local training program as a potential certified volunteer ombudsman.

(19) Professional--Refers to an individual who has obtained a four-year bachelor degree in aging-related areas or human services, or has equivalent qualifying experience as a substitute for a degree. Such substitution shall be consistent with the employing entity's personnel policies.

(20) State Long-Term Care Ombudsman, also known as the State Ombudsman--The person designated by the Executive Director of the Department as Chief Administrator of the Office of the State Long-Term Care Ombudsman, in accordance with the requirements of the Older Americans Act, regarding expertise and experience. The State Ombudsman is accountable to the Executive Director of the Department for program and personnel matters.

(b) Purpose. The purpose of this rule is to assure the development and operation of an ombudsman program, which advocates for the rights of residents and their families to receive the highest quality of care and quality of life in long-term care facilities and which provides services to assist in protecting the health, safety and welfare of residents.

(c) Philosophy. Persons who are unable to care for themselves are entitled to dependable and consistent care that includes:

(1) a safe and healthy environment;

(2) satisfaction of nutritional needs;

(3) medical services, including physical, mental and psychosocial rehabilitation;

(4) an environment that promotes and maintains the individual's dignity, self-determination, communication and protection of individual rights.

(d) Eligibility. Residents of long-term care facilities aged 60 and above are eligible for Ombudsman services. Residents who are under 60 years of age and require advocacy services may be served if the advocacy effort benefits 60-year-old and older residents.

(e) Access. The Office shall assure that managing local ombudsmen and certified staff ombudsmen shall be granted access to long-term care facility residents and their records if consent of the resident or the legal representative of the resident is obtained or as permitted by the Older Americans Act and state statute as defined in Ombudsman procedures.

(f) Responsibilities of contractors to operate local ombudsman entities. Contractors shall be either an area agency on aging or an entity defined by the Board. The local ombudsman entity shall:

(1) be an organization with a responsive and visible presence in its region. It shall:

(A) perform the duties as outlined in the OAA consistent with these rules and the procedures required by the Office:

(i) provide services to protect the health, safety, welfare and rights of residents;

(ii) ensure that residents have regular, timely access to representatives of the program and have timely responses to complaints and request for assistance;

(iii) identify, investigate and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;

(B) be an expert and reliable source of information for families seeking information on long-term care placement or general requests for assistance;

(C) have a visible and active presence in long-term care facilities sufficient for clients and families to have access to ombudsman services that promote or improve quality of care and that result in the timely identification and resolution of complaints and concerns. In addition to regular visits by certified ombudsmen, each licensed nursing home shall be visited a minimum of one time, and more often as necessary, each year by the managing local ombudsman of the local ombudsman entity. The local ombudsman entity may establish affiliations with other volunteer groups to exchange information and identify advocacy needs to support facility coverage.

(D) coordinate with state, regional and local agencies and be recognized as an active member in the continuum of care in the communities it serves;

(E) have a mutually positive referral relationship with the Texas Department of Human Services and the Texas Department of Protective and Regulatory Services; and

(F) be a catalyst for community involvement in long-term care facilities and be viewed as a credible source of information for the community, the regulatory system, and the nursing home industry;

(2) appoint the managing local ombudsman who shall meet the requirements of a professional. In addition, two years of direct services to the elderly or experience in ombudsman services, advocacy, dispute resolution, or volunteer management are preferred.

(3) have adequate staff to manage all aspects of the program and shall designate the managing local ombudsman.

(4) establish and maintain a complaint management system that at a minimum shall:

(A) obtain or provide training to interns and certified volunteer ombudsmen on handling complaints and dispute resolution;

(B) have an intake process for receiving complaints;

(C) have a written process for certified volunteer ombudsmen to identify and investigate complaints and concerns with referral to the managing local ombudsman or his/her designee when assistance is needed;

(D) have a written process for equitably resolving complaints;

(E) have a process for reporting complaint activity as required by the local ombudsman entity and the Office; and

(F) have a written process to assure that complaint and client-oriented material remain confidential and is protected from access by unauthorized persons.

(5) establish a process to identify and remove conflicts of interest as prescribed in procedures established by the Office;

(6) establish and maintain a volunteer management system in which the local Ombudsman entity shall:

(A) analyze the number of volunteers needed for administrative duties, other activities, and facility coverage;

(B) recruit individuals to become certified volunteer ombudsmen using all appropriate means and conduct appropriate follow-up with individuals who expressed interest so that the total number of certified staff and volunteer ombudsmen are at least the number prescribed by the Legislative Budget Board of the Texas Legislature;

(C) process applicants through the completion of an application that contains all minimum information required by the Office to include the completion of a criminal background check of all volunteer and paid staff ombudsmen prior to certification. Supervise the completion of certification training and internship; make recommendation for certification of individuals to the State Long-Term Care Ombudsman and assign certified ombudsmen to appropriate long-term care facilities;

(D) provide state-approved initial certification training and provide 12 hours of local continuing education each federal fiscal year, for each representative of the Office;

(E) provide state-approved orientation and training for Friendly Visitors, if such a program is operated by the local ombudsman entity;

(F) support and supervise volunteers and staff involved in the local program during their service;

(G) promote retention through regular communication, recognition, motivational activities, and feedback of satisfaction with program services;

(H) establish and use a grievance and complaint system; and

(I) develop exit procedures to include input from the certified volunteers and staff who leave the ombudsman program and notification to the Office of their status with their written comments.

(7) assure that residents, families, and complainants have access to ombudsman services during the normal business week at no cost through a toll-free number or acceptance of collect calls with acknowledgement of the receipt of the complaint within one business day. The telephone number of the local ombudsman entity and the managing local ombudsman shall be listed under the area agency on aging listing in accordance with current Department policy;

(8) support the formation of family and resident councils in each facility of the region, in an effort to provide advocacy resources to promote quality of care;

(9) provide informational resources relating to quality of care and resident-centered care to residents, family, and staff of each nursing home in the region. Be available to provide in-service training in long-term care facilities in the region. Certified volunteer or paid staff ombudsmen may conduct such in-service training;

(10) coordinate with regional administrators or their designees of the Texas Department of Human Services Long-Term Care Regulatory Services division serving the region at least quarterly, and the Texas Department of Protective and Regulatory Services as needed, to develop efficient referral, communication, and problem-solving procedures;

(11) participate in survey activities with the Texas Department of Human Services in accordance with the cooperative agreement between the Department and the Texas Department of Human Services;

(12) submit program performance and other reports in accordance with requirements established by the Office and the Department;

(13) develop and implement individual nursing home advocacy plans followed by development and implementation of a regional advocacy plan that is based on an analysis of individual nursing home advocacy plans and other sources of information that supports the achievement of the highest levels of quality of care and quality of life for residents;

(14) promote local awareness of the ombudsman entity through the frequent use of local and regional resources, including the media, in order to provide visibility to the program, to include listing the phrase, "Advocate for Nursing Home Residents," in all brochures, publications, and media activities; and

(15) encourage coordination with citizen, membership and advocacy organizations to support quality of care and increase community involvement with and awareness of long-term care services.

(g) Responsibilities of Certified Volunteer Ombudsmen: A certified volunteer ombudsman shall execute the purposes of the ombudsman program as outlined in this rule and under the supervision of the managing local ombudsman.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200303089
Gary Jessee
Director of the Office of AAA Support and Operations
Texas Department on Aging
Effective date: June 8, 2003
Proposal publication date: March 14, 2003
For further information, please call: (512) 424-6857

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40 TAC §260.14, §260.21

The Texas Department on Aging adopts the repeal of §260.14 and §260.21, concerning Corporate Eldercare and Public Hearing Procedures for Area Agencies on Aging, without changes to the proposed text as published in the March 14, 2003, issue of the *Texas Register* (28 TexReg 2300) and will not be republished.

The rules that are being repealed outline the requirements for the Corporate Eldercare and Public Hearing Procedures for Area Agencies on Aging, respectively.

The rules are being repealed as the requirements are included in the Older Americans Act, making the rules redundant and unnecessary. Area agencies on aging, through their contract with the Texas Department on Aging, are required to meet the requirements of the Older Americans Act including the required assurances.

No comments were received regarding adoption of the rules.

The repeals are adopted under Texas Human Resources Code §101.021, which provides the Texas Department on Aging with the authority to adopt rules governing the functions of the Department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200303088
Gary Jessee
Director of the Office of AAA Support and Operations
Texas Department on Aging
Effective date: June 8, 2003
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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan--Revised

Texas Veterans Commission

Title 40, Part 15

TRD-200303035

Filed: May 16, 2003

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, §123.3. Respiratory Care Practitioners Advisory Committee, and §143.3. Medical Radiologic Technologist Advisory Committee.

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-200303113

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: May 19, 2003

Adopted Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) adopts the rules review and readopts Chapter 350, Texas Risk Reduction Program, *without changes*, in accordance with Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The notice of intention to review was published in the February 14, 2003 issue of the *Texas Register* (28 TexReg 1533).

CHAPTER SUMMARY

Chapter 350 includes information and procedures necessary to demonstrate compliance with the Texas Risk Reduction Program. Chapter 350 outlines requirements for remedy standards to satisfy cleanup responsibilities at affected properties, including the relocation of soils containing chemicals of concern (COC) for reuse purposes; requirements for conducting property assessments, including groundwater resource classification, land use classification, notification requirements, and data acquisition and reporting requirements; requirements for establishing protective concentration levels of COC that can remain and still be protective of human and ecological health; requirements for affected property assessment reports, self-implementations notices, response action effectiveness reports, response action plans, response action completion reports, and post-response action care reports; requirements for the use of institutional controls which includes the filing/recording of a deed notice and Voluntary Cleanup Program certificate of completion; and requirements for establishing a facility operations area which addresses multiple sources of COCs, within an operational chemical or petroleum manufacturing plant, that is required to perform corrective action.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a review and determined that the reasons for the rules in Chapter 350 continue to exist. The rules are needed to provide a consistent corrective action process directed toward protection of human health and the environment balanced with the economic welfare of the citizens of the state. The rules are based on the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, the rulemaking power granted the commission under Texas Water Code (TWC), Chapter 5, and the commission's responsibilities for protecting water quality under TWC, Chapter 26.

PUBLIC COMMENT

A public hearing was not held for this rules review. The comment period closed March 14, 2003. No comments were received.

TRD-200303121

Stephanie Bergeron
Director Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 20, 2003

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) readopts, without changes, 16 TAC Chapter 65, Boilers: §§65.1, 65.10, 65.20, 65.30, 65.50, 65.60, 65.65, 65.70, 65.80, 65.90, and 65.100 in accordance with the Texas Government Code, §2001.039. The proposed rule review was published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3089).

The comment period on the proposal and review closed May 11, 2003. No comments were received regarding re-adoption of this chapter.

Texas Government Code, §2001.039 requires state agencies to review and consider for re-adoption rules adopted under the Administrative Procedures Act. The review must include, at a minimum, an assessment that the reason for the rules continues to exist. The Department has conducted a review of the rules in Chapter 65 and determined that the rules are still essential in effectuating the provisions of the Health and Safety Code, Chapter 755, which gives the Department the authority to promulgate and enforce a code of rules and take all action required to assure compliance with the intent and purpose of the Code.

TRD-200303019
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: May 15, 2003

Texas Department of Mental Health and Mental Retardation

Title 25, Part 2

The Texas Department of Mental Health and Mental Retardation (department) adopts the review of Texas Administrative Code, Title 25, Part 2, Chapter 419, Subchapter Q, concerning enrollment of Medicaid waiver program providers. The notice of intention to review was published in the March 21, 2003, issue of the *Texas Register* (28 TexReg 2363).

No comments were received regarding the review. The department has reviewed the rules in Chapter 419, Subchapter Q, and has determined that the reasons for originally adopting the rules continue to exist. The rules in Chapter 419, Subchapter Q, are readopted in accordance with the Texas Government Code, §2001.039, which requires the Texas Mental Health and Mental Retardation Board to review and consider for readoption each of its rules every four years, and under the department's broad rulemaking authority for mental health and mental retardation services pursuant to Texas Health and Safety Code, §532.015(a).

TRD-200303032
Rudy Arredondo
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: May 16, 2003

Texas Veterans Commission

Title 40, Part 15

The Texas Veterans Commission adopts the review of Chapter 450 "Veterans County Service Officers Certification of Training," Chapter 451 "Veterans County Service Officers Accreditation," and Chapter 452 "Administrative General Provisions" pursuant to the Texas Government Code, §2001.039, regarding Agency Review of Existing Rules.

The proposed review was published in the February 14, 2003, issue of the *Texas Register* (28 TexReg 1534).

No comments were received regarding adoption of the rule review.

The agency finds the reason for adopting the rules continues to exist.

TRD-200303034
James E. Nier
Executive Director
Texas Veterans Commission
Filed: May 16, 2003

Texas Water Development Board

Title 31, Part 10

Pursuant to the notice of proposed rule review published in the April 4, 2003 issue of the *Texas Register*, (28 TexReg 2919), the Texas Water Development Board (board) has reviewed and considered for readoption, revision or repeal 31 TAC, Part 10, Chapter 359, Water Banking, in accordance with the Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continues to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the rules are still necessary and readopts the sections because they establish and administer the Texas Water Bank in accordance with the Texas Water Code, Chapter 15, Subchapter K. As a result of the review, the board adopts amendments to §359.2, Definitions, and §359.14, Fees. This completes our review of Chapter 359.

TRD-200303163
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: May 21, 2003

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: 1 TAC §251.12(d)

EXAMPLE CONTRACT FOR SERVICES

Art.1. Parties and Purposes

1.1 The Texas Commission on State Emergency Communications ("Commission") is charged by law with the responsibility to oversee the provision of 9-1-1 emergency services throughout the state, and ________________ ("RPC") is charged with the responsibility to provide these services in its region. Providing these services requires a partnership among and cooperative efforts by the Commission, the RPC and the state's local governments, which are represented on the RPC's governing body.

1.2 The Commission and the RPC enter into this Contract for Services ("Contract") to clarify and better define the rights and duties of each in carrying out their individual and collective responsibilities under the law.

Art. 2. Compliance with Applicable Law

2.1 The RPC shall comply with all applicable federal and state laws ("applicable law") in carrying out its strategic plan that has been approved by the Commission.

2.2 Applicable law includes, but is not limited to, the State Administration of Emergency Communications Act, Texas Health and Safety Code, Chapter 771; Commission rules implementing the Act contained in Title 1, Texas Administrative Code, Chapters 251, 252, 253, and 255; the Uniform Grant Management Standards (UGMS), Title 1, Texas Administrative Code, Sections 5.151 - 5.167; the Preservation and Management of Local Government Records Act, Texas Government Code, Chapter 441, Subchapter J; Texas Local Government Code, Chapter 391; Texas Government Code, Chapter 2260; and amendments to the referenced statutes and rules.

2.3 Applicable law also includes, but is not limited to, the policies and procedures adopted by the Commission. The Commission may adopt new policies, procedures and rules and amend its existing policies, procedures and rules subject to the requirements of the Administrative Procedure Act ("APA"), Texas Government Code, Chapter 2001; any new or amended policy or procedure (other than an adopted rule) shall be enforceable against the RPC 30 days following the date of its adoption, unless the Commission finds and declares that an emergency exists which requires that such policy or procedure be enforceable immediately against the RPC. The Commission shall provide the RPC written notice of all new or amended policies, procedures and interpretations of Commission rules within a reasonable time after same are adopted by the Commission.

2.4 The RPC shall repay any 9-1-1 surcharge funds and service fees ("9-1-1 funds") expended by the RPC in noncompliance with applicable law. Such reimbursement shall be made in accordance with established Commission policies and procedures. The RPC shall advise the Commission in writing of its efforts to recover 9-1-1 funds in accordance with Article 4.1(d) herein.

2.5 In accordance with Texas Health and Safety Code, Section 771.078(6), the Commission may withhold disbursement of funds to a RPC that does not follow a standard imposed by this Contract, a Commission rule and/or policy, or a statute.

Art. 3. Monitoring Compliance

3.1 The RPC recognizes that the Commission reserves the right to perform on-site monitoring of the RPC and/or its performing local governments or Public Safety Answering Points (PSAPs) for compliance with Commission rules and policies, as well as, all applicable law, and the RPC agrees to cooperate fully with such on-site monitoring.

3.2 The RPC recognizes that the Commission reserves the right to monitor RPC financial procedures and validate financial reimbursement requests for compliance with Commission rules and policies, accuracy, completeness, and appropriateness, prior to the Commission releasing state appropriated funds from the revenues generated in the RPC region.

Art. 4. Standard Interlocal Agreement with Local Governments

4.1 The RPC shall use interlocal agreements between itself and its local governments and PSAPs relating to the planning, development, operation, and provision of 9-1-1 service, the use of 9-1-1 funds and adherence to applicable law. These agreements must, at a minimum:

(a) provide for compliance with applicable provisions of the state's UGMS as established by the Governor's Office of Budget and Planning, under the authority of Chapter 783 of the Texas Government Code;

(b) provide a provision that the RPC will provide 9-1-1 funds to the local governments or PSAPs on a reimbursement basis using a monitoring process that provides assurance that the reimbursement requests from the local governments and PSAPs are complete, accurate, and appropriate;

(c) include a provision that the RPC may withhold, decrease, or seek reimbursement of 9-1-1 funds in the event that those 9-1-1 funds were used in noncompliance with applicable law.

(d) include a provision whereby the local governments and PSAPs shall return or reimburse the RPC and/or the Commission, as applicable, any 9-1-1 funds used in noncompliance with applicable law;

(e) include a provision that such return or reimbursement of 9-1-1 funds to the RPC and/or the Commission, as applicable, shall be made by the local government or PSAP within 60 days after demand by the RPC, unless an alternative repayment plan is approved by the RPC and the Commission;

(f) include provisions, consistent with UGMS and applicable law, addressing the RPC's ownership, transfer of ownership, and/or control of equipment acquired with 9-1-1 funds; in connection with the provisions of 9-1-1 service ("9-1-1 equipment");

(g) include a provision, consistent with UGMS and applicable law, requiring the RPC to maintain a current inventory of all 9-1-1 equipment;

(h) include a provision requiring reimbursement to the RPC and/or the Commission for damage to 9-1-1 equipment caused by intentional misconduct, abuse, misuse or negligence by PSAP employees; though this provision shall not include ordinary wear and tear or ordinary day to day use of equipment;

(i) provide, consistent with UGMS and applicable law, that the local governments and PSAPs will maintain adequate fiscal records and supporting documentation of all 9-1-1 funds distributed to such local governments and PSAPs and all 9-1-1 funds spent by such local governments and PSAPs for 9-1-1 service, with specific detail for 9-1-1 funds received or spent relating to addressing or addressing maintenance activities;

(j) provide that the Commission or its duly authorized representative shall have access to and the right to examine all books, accounts, records, files, and/or other papers, or property pertaining to the 9-1-1 service, belonging to or in use by the local government, the PSAP, or by any other entity that has performed or will perform addressing or addressing maintenance activities; and

(k) provide a commitment by the RPC, the local government, or PSAP, as applicable, to continue addressing database maintenance activities in accordance with the approved Regional Plan (including any approved amendments) as a condition of the receipt of 9-1-1 funds as prescribed by the RPC strategic plan.

Art. 5. Competitive Procurement and Contract Administration

5.1 The RPC shall use competitive procurement practices and procedures similar to those required by state law for local governments, as well as any additional Commission policies, in connection with the procurement of 9-1-1 Customer Premises Equipment, 9-1-1 Network and 9-1-1 Database services and any other items to be obtained with 9-1-1 funds. For purposes of this Contract, the Texas Association of Regional Councils' ("TARC") Model Procurement Policy is considered sufficiently similar to the state law involved. Before entering any contract or agreement, the RPC shall provide documentation to the Commission for review and approval of any asserted sole source exception to competitive procurement practices. Upon submission of proper documents required by applicable law, the Commission shall respond to the RPC within 15 working days of receipt of documentation for sole source exception.

5.2 The RPC shall include a specific, detailed statement of work, including appropriate benchmarks to evaluate compliance, in all contracts with vendors, local governments, and PSAPs to be paid from 9-1-1 funds.

5.3 The RPC shall implement a contract administration system that ensures contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The RPC shall include performance bonds, a provision making refunds available for lack of quality performance, and/or contractual performance penalties in contracts with vendors to be paid from 9-1-1 funds. The RPC shall also include contract termination and modification provisions that promote quality performance and compliance by vendors for contracted items or services. The RPC shall notify the Commission of any performance or compliance issues with vendors that have not been satisfactorily corrected within 60 days of notice to the vendor.

5.4 The RPC shall maintain sufficient records detailing the significant history of procurement, including the rationale for the method of procurement, the selection of contract type, the contractor selection or rejection, and the basis for the contract price.

Art. 6. Service Fee Funding

6.1 In accordance with Texas Health & Safety Code, Section 771.071, as amended by House Bill 1983 (76th Legislative Session), the Comptroller shall receive all landline service fees and wireless service fees that are billed, collected and remitted by telecommunications service providers. The Comptroller shall deposit money from the fees to the credit of the 9-1-1 services fee fund in the State Treasury.

6.2 The Commission shall distribute money appropriated to the Commission from the 9-1-1 services fee fund to the RPC for use in providing 9-1-1

services as provided by this Contract, in accordance with Texas Health & Safety Code, Sections 771.071(f) and 771.078. Funds will be distributed to the RPC quarterly, according to current Commission payment methodology, unless the RPC is in substantial noncompliance with Commission rules and procedures. The RPC shall distribute the money to public agencies within its jurisdiction for use in providing those services. All fees and surcharges collected under the authority of Texas Health & Safety Code, Chapter 771, may be used only for planning, development, provision, and enhancement of the effectiveness of 9-1-1 service as approved by the Commission, and as provided by Texas Health & Safety Code, Section 771.075.

6.3 Before the Commission makes a contract payment to the RPC from the 9-1-1 Services Fee Account for 9-1-1 service contract, the Commission shall ensure that the RPC has spent all balances and interest earned from emergency service fees for landline and wireless telecommunication services billed prior to August 31, 1999, and held outside the State Treasury, as well as, any unexpended balances in funds reserved to replace 9-1-1 capital equipment remaining after acquisition of equipment scheduled for replacement during the 2004-05 biennium.

6.4 No more than $15,000,000 appropriated to the Commission for the FY 2004-05 biennium shall be allocated to the RPCs for administration of the statewide 9-1-1 program.

6.5 None of the funds appropriated to the Commission to fund statewide 9-1-1 emergency communications and allocated to the RPC, may be used to replace or fund a reserve for future replacement of 9-1-1 capital equipment.

6.6 The RPC shall assist the Commission in creating a ten (10) year comprehensive statewide capital replacement plan for submittal to the Legislative Budget Board no later than November 30, 2003.

6.7 As provided by Texas Health & Safety Code 771.078(d), not more than ten percent (10%) of the money received by the RPC under Section 771.078(b) may be used for indirect costs by the RPC within its administrative budget.. The Governor's office will review and evaluate indirect costs and shall use the federal Office of Management and Budget circulars A-87 and A-122 or use any rules relating to the determination of indirect costs adopted under Chapter 783, Texas Government Code.

6.8 In accordance with Texas Health & Safety Code, Section 771.078, the Commission shall ensure that the RPC receives money for 9-1-1 services in two separately computed amounts, one each for the respective landline and wireless service fees. The amount distributed to the RPC shall be in accordance with Texas Health & Safety Code, Sections 771.078(b)(1) and (b)(2), not to exceed the appropriated amount, as follows:

- Landline service fee shall be calculated as follows:

Total Emergency Service Fee Revenue Collected, Deposited and Appropriated to the Commission	X	Total Emergency Service Fees Collected from the Region Total Emergency Service Fees Collected for the State

- Wireless service fee shall be calculated as follows:

Total Wireless Emergency Service Fee Revenue Collected, Deposited and Appropriated to the Commission	X	Population of Region Population of State

6.9 Once per quarter of each fiscal year, the Commission shall calculate these amounts and deposit the resulting amounts into the designated sub-account inside the State Treasury for allocation to the RPC.

6.10 Upon a request from the RPC, the Commission shall provide the RPC with documentation and financial records of the amount of money collected in the region or of an amount of money allocated to the RPC, in accordance with Texas Health & Safety Code, Section 771.078, and this Contract.

Art. 7. Surcharge

7.1 In accordance with Texas Health & Safety Code, Section 771.078(e), the Commission may allocate surcharges under Section 771.072(d) by means of this Contract.

7.2 Section 771.072 of Texas Health & Safety Code indicates that the Commission may periodically allocate surcharges to the RPC for use in implementing the approved strategic plan to provision 9-1-1 service throughout its region.

7.3 As implemented by Commission Rule 251.6, *Guidelines for Strategic Plans, Amendments, and Revenue Allocation*, it is the policy of the Commission to obligate surcharge funds for the biennium, based upon the approved RPC strategic plan and appropriated funds for the current biennium. The allocation of surcharge, as well as all other 9-1-1 funds, is contingent upon the RPC's compliance with the terms of this Contract, Commission policies and rules, as well as, all applicable law.

Art. 8. 9-1-1 Funds Distribution

8.1 The Commission will distribute all 9-1-1 funds, both service fee and surcharge, in accordance with Texas Law and CSEC rule and policy. As provided by Texas Government Code, Article IX, Section 6.34 (a), General

Appropriations Act, a state agency shall distribute grants on a reimbursement basis, or as needed, unless otherwise provided by statute or otherwise determined by the grantor agency to be necessary for the purposes of the grant.

8.2 Quarterly disbursement of 9-1-1 funds to the RPC shall be made on a reimbursement basis according to Commission policy. Within 30 days after the end of the first, second, and third fiscal quarters, the Commission may reimburse the RPC for expenditures shown on the quarterly financial report, less previous payments from the Commission and local fund contributions by the RPC. If the RPC's funding is depleted before the end of a fiscal quarter, a financial emergency funding request may be made by the RPC to the Commission (see Art. 9. RPC Emergency Funding).

8.3 The Commission has determined that a proper public purpose is served by providing start-up funding, at the beginning of each fiscal year, to the RPC for payment of operating costs of the region's 9-1-1 system. Start-up funding to the RPC from the Commission may be made at the beginning of each fiscal year if the RPC has no cash available to pay the region's initial fiscal year program expenses. The Commission shall provide start-up funds to the RPC according to Commission policy. Start-up funding is defined as cash from appropriated funds provided by the Commission to the region to pay initial fiscal year 9-1-1 program expenses, prior to the first quarterly reimbursement request being received for the current fiscal year. Start-up funds from the prior fiscal year, ending the preceding August 31st, shall be returned to the Commission no later that October 30th each year.

Art. 9. RPC Emergency Funding

9.1 The Commission may provide appropriated funds to the RPC upon demonstration and documentation that a financial emergency exists that will compromise the 9-1-1 system or impact public safety.

9.2 The Commission shall consider a financial emergency as a situation in which the RPC requires additional funding to sustain the current and normal operation of 9-1-1 systems and their administration, as well as to meet contractual obligations as provided for in their approved strategic plan; and that, without the assistance of these additional funds, would result in a compromise of the 9-1-1 system or impact public safety. A financial emergency would arise, and public safety compromised, if the 9-1-1 system was terminated due to non-payment of invoices.

9.3 Emergency funds may be distributed based upon the documented expenditures creating the need. The provision of emergency funds will be

used for specific operational and administrative expenses identified in the supporting documentation.

9.4 The request shall include a narrative description of what the funds are to be used for, and how these expenditures relate to their strategic plan.

9.5 The Commission will review the request for accuracy and compliance with the current approved strategic plan. Upon review and approval of the request, the Commission will disburse the necessary funding, not to exceed the approved strategic plan and the appropriation of revenues.

9.6 The advanced funds shall remain at the regional level, supporting operations and administration expenses throughout the fiscal year, and will be reconciled in the fourth quarter of each fiscal year.

Art. 10. Strategic Planning

10.1 In accordance with Texas Health & Safety Code, Section 771.055, as amended by House Bill 1983 (76th Legislative Session), the RPC shall develop a regional plan for the establishment and operation of 9-1-1 service throughout the respective region. The 9-1-1 service must meet the standards established by the Commission. A regional plan must describe how the 9-1-1 service is to be administered.

10.2 The RPC must update its regional plan at least once during each state fiscal biennium, and must include the following:

- A description of how money allocated to the region is to be allocated throughout the region served by the RPC;
- Projected financial operating information for the two state fiscal years following the submission of the plan; and
- Strategic planning information for the five state fiscal years following submission of the plan.
- A Historically Underutilized Business (HUB) plan, pursuant to Chapter 2161 of the Government Code.

10.3 The RPC shall submit a regional plan, or amendment to the plan, to the Commission for review and approval or disapproval, as required by Texas Health & Safety Code, Section 771.056. In turn, the Commission shall consider the appropriateness of the plan or amendment in satisfying the standards set by the Commission, the cost and effectiveness of the plan or amendment, as well as the appropriateness of the plan or amendment in context with overall statewide 9-1-1 service.

10.4 The Commission shall notify the RPC of the approval or disapproval of the regional plan submission, or an amendment to the plan, within 90 days of receipt of an administratively complete submission. Amendments that do not require Commission approval, as defined by Commission Rule 251.6, *Guidelines for Strategic Plans, Amendments, and Revenue Allocation*, will be reviewed and the RPC notified of approval or disapproval within 15 working days of receipt by Commission staff. If the plan or amendment is disapproved, the Commission will provide specific reasons for such, and shall establish a deadline for submission of a modified plan.

10.5 If the plan or amendment is approved, the Commission shall allocate to the RPC from the money collected under Texas Health & Safety Code, Sections 771.071, 771.0711, and/or 771.072 as appropriated to the Commission, and in accordance with the terms of this Contract.

Art. 11. Reporting Requirements

11.1 The RPC shall submit financial and performance information and reports regarding 9-1-1 service and administration to the Commission in accordance with Texas Health & Safety Code Section 771.078. The RPC shall provide the reporting information in accordance with standards and guidelines established by Commission rules and policies. The RPC shall submit the following information to the Commission, at least once per quarter of each fiscal year.

- Financial information regarding administrative expenses shall be reported in accordance with generally accepted accounting principles.

- Information regarding the current performance, efficiency, and degree of implementation of emergency communications services in the region served by the RPC.

11.2 The RPC shall be responsible for collecting and reporting efficiency data on the operation of each of the 9-1-1 answering points within its region. The RPC shall submit at a minimum the following information to the Commission, at least once per quarter of each fiscal year, according to current Commission policy.

- Total 9-1-1 calls answered per month
- Outage of 9-1-1 service (type and duration)
- Total Wireline calls answered per month
- Total Wireless 9-1-1 calls answered per month

Art. 12. Use of Answering Points

12.1 The RPC shall comply with the minimum standards and guidelines established by Commission Rule 251.1, *Regional Strategic Plans for 9-1-1 Service*, for the use of answering points and the creation of new answering points in accordance with Texas Health & Safety Code Section 771.078.

Art. 13. Dispute Resolution

13.1 The dispute resolution process provided for in Chapter 2260, Subsection F, Title 10, of the Texas Government Code must be used by the Commission and the RPC to attempt to resolve all disputes arising under this Contract. Disputes include, but are not limited to, disagreement between the parties about the meaning or application of the RPC's proposed or approved strategic plan, the applicable law or policy, or this Contract.

13.2 The parties desire to resolve disputes without litigation. Accordingly, if a dispute arises, the parties agree to attempt in good faith to resolve the dispute between themselves. To this end, the parties agree not to sue one another, except to enforce compliance with this Art. 13, until they have exhausted the procedures set out in this Art. 13.

13.3 At the written request of either party, each party shall appoint one non-lawyer representative to negotiate informally and in good faith to resolve any dispute arising between the parties. Notwithstanding Section 2230.052(b) of the Texas Government Code, the parties agree to appoint their representatives and hold the first negotiating meeting within 15 calendar days of receipt of the request. The representatives appointed shall determine the location, format, frequency, and duration of the negotiations.

13.4 If the representatives cannot resolve the dispute within 30 calendar days after the first negotiation meeting, the parties agree to submit the dispute to mediation by an administrative law judge employed by the State Office of Administrate Hearings (SOAH), as authorized by Chapter 2009 of the Texas Government Code law.

13.5 Within 45 calendar days after the effective date of this Contract, the Commission agrees to contract with SOAH to mediate any future disputes between the parties described in Article 13.1. Each party agrees to pay one-half the total fee and expenses SOAH charges for conducting a mediation, and the Commission agrees that the RPC's share of the total is an allowable cost reimbursable to the RPC under this Contract.

13.6 The parties agree to continue performing their duties under this Contract, which are unaffected by the dispute, during the negotiation and mediation process.

13.7 If the parties are unable to settle their dispute by mediation, either party may request a contested case hearing under Section 2260.102 of the Texas Government Code.

Art. 14. Miscellaneous Provisions

14.1 The RPC shall work with the Commission, the local governments and PSAPs to develop, maintain and regularly monitor performance of the operation and the provision of 9-1-1 service and to develop and implement risk assessment processes.

14.2 As the RPC becomes aware of the need for additional training or expertise relating to the planning, development, implementation or operation of 9-1-1 service (including addressing or address maintenance activities), by the RPC, the local governments or PSAPs in their areas, the RPC shall notify the Commission promptly of that need so that all parties may address that need in a timely manner.

14.3 Unless otherwise directed by the Commission, the RPC shall arrange for the performance of an annual financial and compliance audit of its financial statements and internal control environment according to the requirements of the Texas UGMS and the Texas Single Audit Circular, as established by the Governor's Office of Budget and Planning under the authority of Chapter 783 of the Texas Government Code. The RPC shall be liable to the Commission for any costs disallowed as a result of the audit of its financial statements and internal control environment pursuant to funds received under the terms of this Contract.

14.4 The RPC recognizes the right of the State Auditor's Office to review and/or audit the RPC's documentation and accounts relevant to the state-funded 9-1-1 program as authorized by Texas Government Code, Chapter 321. Such an audit or review is considered separate and apart from audits required by UGMS.

14.5 A summary of the approved RPC 9-1-1 strategic plan costs and revenue allocation projections shall be made part of this Contract by way of attachment.

14.6 To the extent of any conflict between any item in this Contract and an adopted Commission rule, present or future, the Commission rule shall prevail over the item in this Contract.

14.7 Any alterations, additions, or deletions to the terms of this Contract shall be made by amendment hereto in writing and executed by both parties to this Contract.

14.8 This Contract takes effect on the date it is signed on behalf of the Commission, and it terminates on August 31 of the second year of the biennium.

AGREED TO:

Paul Mallett	**Date**
Executive Director	
Texas Commission on	
State Emergency Communications	
333 Guadalupe, Suite 2-212	
Austin, Texas 78701-3942	

Ms. Jane Jones, Executive Director	**Date**
Council of Governments	
Hometown, Texas 78123	

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.

Agriculture Resources Protection Authority

Notice of Taking of Public Comment on State's Pesticide Regulation Efforts

In accordance with the Texas Agriculture Code, §76.009(i), and policies adopted by the Agriculture Resources Protection Authority (the Authority), notice is hereby provided that the Authority will take public comment on the status of the state's pesticide regulation efforts at its next regularly scheduled meeting. The meeting will be held on Monday, June 2, 2003, beginning at 10:00 a.m. at the offices of the Texas Department of Agriculture located at 1700 North Congress, Room 911, Austin, Texas. For more information, please contact Phil Tham, Assistant Commissioner for Pesticide Programs at (512) 463-1093.

TRD-200303169
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Agriculture Resources Protection Authority
Filed: May 21, 2003

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Office of the Attorney General

Access and Visitation Grant Request for Letters of Interest

Pursuant to 42 U.S.C. 669b, the U.S. Department of Health and Human Services is providing grant funding to the State of Texas for non-custodial parent access and visitation programs. The Office of the Attorney General is responsible for the administration of the program in Texas. The Office of the Attorney General intends to award grants to eligible entities for the purposes of the program.

These grants may be used to establish and administer programs to support and facilitate non- custodial parents' access to and visitation with their children. Eligible activities include: mediation, counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision, and neutral drop-off and pick-up), and development of guidelines for visitation and alternative custody arrangements. Projects funded under this program do not require statewide operation. Entities eligible for funding include courts, local public entities, and private non-profit organizations with a minimum of three years of operating history. Matching funds (cash or in-kind) are required. Preference will be given to those proposals emphasizing visitation enforcement programs. **The application deadline for submission is 5:00 p.m. CDST, on June 6, 2003.**

The Office of the Attorney General, as the state's Title IV-D agency, invites written expressions of interest in this grant from eligible entities postmarked no later than 5:00 p.m. central daylight-saving time (CDST), on June 6, 2003. Respondents will be sent a complete application package.

Letters of interest must be sent by regular mail, express service (non-U.S. Postal Service), FAX, or e-mail to:

(1) Regular mail:

Clayton Sanders

Office of the Attorney General

Child Support Division

P. O. Box 12017, MC 058-4

Austin, Texas 78711-2017

(2) Express service:

Clayton Sanders

Office of the Attorney General

Child Support Division

5500 Oltorf Street, MC 058-4

Austin, Texas 78741

(3) FAX:

(512) 460-6075

ATTN: Clayton Sanders

(4) E-mail:

clayton.sanders@cs.oag.state.tx.us

For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at 512 463-2110.

TRD-200303109
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 19, 2003

♦ ♦ ♦

Texas Solid Waste Disposal Act and Texas Water Code Settlement Notice

The State of Texas hereby gives notice of the proposed resolution of an environmental enforcement lawsuit brought pursuant to the Texas Solid Waste Disposal Act and the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to Section 7.110 of the Texas 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 Law.

Case Title and Court: *Harris County, Texas, and the State of Texas, by and through the Texas Natural Resource Conservation Commission, a Necessary and Indispensable Party v. Waste Resources, Inc.;* No. 2001-55871 in the 270th Judicial District, Harris County, Texas.

Nature of Suit: This suit concerns storage and disposal of municipal solid wastes at a facility at 14403 Luthe Road in Houston, Texas. The facility was operated by Defendant Waste Resources, Inc., without a permit from the Texas Commission on Environmental Quality (formerly the Texas Natural Resource Conservation Commission).

Proposed Agreed Judgment: The proposed Agreed Final Judgment settles all of the claims in the suit. The Agreed Final Judgment requires Defendant to pay $14,000.00 in civil penalties and $2,000.00 in attorney's fees.

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 Liz Bills, 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, you may contact A.G. Younger, Agency Liaison, at 512 463-2110.

TRD-200303150
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 21, 2003

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 05/26/03 - 06/01/03 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 05/26/03 - 06/01/03 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 06/01/03 - 06/30/03 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 06/01/03 - 06/30/03 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200303120
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 20, 2003

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Credit Union Department

Applications to Amend Articles of Incorporation

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application for a name change was received for Doches Community Credit Union, Nacogdoches, Texas. The credit union is proposing to change its name to Doches Credit Union.

An application for a name change was received for Navarro Federal Employees Credit Union, Corsicana, Texas. The credit union is proposing to change its name to Navarro Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200303156
Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 21, 2003

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from The Education Credit Union, Amarillo, Texas to expand its field of membership. The proposal would permit members of the Panhandle PC User's Group, Amarillo, Texas, to be eligible for membership in the credit union.

An application was received from United Heritage Credit Union, Austin, Texas to expand its field of membership. The proposal would permit persons that live, work, or attend school and business located in Smith, Rains, Wood, Upshur, Gregg, Cherokee, Henderson and Van Zandt Counties of Texas, to be eligible for membership in the credit union.

An application was received from United Heritage Credit Union, Austin, Texas to expand its field of membership. The proposal would permit persons that live, work, or attend school and business located in Williamson, Lee, Bell and Milam Counties of Texas, to be eligible for membership in the credit union.

An application was received from United Heritage Credit Union, Austin, Texas to expand its field of membership. The proposal would permit persons that live, work, or attend school and business located in Travis, Bastrop, Caldwell, Hays, Blanco and Burnett Counties of Texas, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Truine Engineering, Inc., who work in or are paid or supervised from Houston, Texas, to be eligible for membership in the credit union.

An application was received from Houston Energy Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees and members of The Arc of Greater Houston, to be eligible for membership in the credit union.

An application was received from Access Credit Union, Amarillo, Texas to expand its field of membership. The proposal would permit persons who live, work, or attend school in Potter and Randall Counties of the State of Texas, to be eligible for membership in the credit union.

An application was received from TruWest Credit Union, Scottsdale, Arizona to expand the field of membership of its branch offices located in Austin, Texas. The proposal would permit members of the Shady

Hollow Home Owner's Association, to be eligible for membership in the credit union.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would remove the exclusionary language relating to employees of any company which has its main office or any facility within the area from the corner of Central Expressway and Floyd Road, south to Walnut Hill Lane, east to Greenville Avenue and then south to Northwest Highway, west to University Park city limits and following the same south to Mockingbird Lane, east to Abrams Road, south to LaVista Drive and following same to Grand Avenue, east to Highland Drive, south to U.S. 67 and thence east along highway to intersection with city limit of Dallas and Mesquite, then following the city limits to Garland city limits, following Garland city limits easterly, northerly, and then westerly to the intersection at Buckingham Road, west to Audelia Road, south to Walnut, west to Floyd Road and south on Floyd Road to point of beginning which protects the field of membership of certain occupational-based credit unions.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would remove the exclusionary language relating to contractors who work under contract for any business or organization including subsidiaries and affiliates that are within the field of membership of Texans Credit Union which protects the field of membership of certain occupational-based credit unions.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would remove the exclusionary language relating to employees and members of Dallas Human Resource Management Association, Inc., which protects the field of membership of certain occupational-based credit unions.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would remove the exclusionary language relating to employees and members of Texas Society of Certified Public Accountants and TSCPA Chapters and employees of TSCPA members which protects the field of membership of certain occupational-based credit unions.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would remove the exclusionary language relating to employees and members of Texas Society of Professional Engineers and employees of TSPE members which protects the field of membership of certain occupational-based credit unions.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would remove the exclusionary language relating to persons who reside or work in Richardson, Plano, and Collin County, Texas which protects the field of membership of certain occupational or associational-based credit unions.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would remove the exclusionary language relating to persons who work or reside in Sachse and Wylie, Texas which protects the field of membership of certain occupational or associational-based credit unions.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would remove the exclusionary language relating to persons who work or reside in Highland Village, Flower Mound, Coppell, Carrollton, Hebron, Lewisville, The Colony, and Frisco, Texas which protects the field of membership of certain occupational or associational-based credit unions.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would remove the exclusionary language relating to individuals who work in Research Park, 12501 Research Boulevard, Austin, Texas, a resubdivision of Research Technology Subdivision, being 253.72 acres in Travis and Williamson County, Texas, as defined in survey case #C8-98-0048.0A, (formerly owned by Texas Instruments Inc., and managed by Trammell Crow Central Texas, Ltd.) which protects the field of membership of certain community, occupation or association-based credit unions.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would remove the exclusionary language relating to the employees of any Rockwell International Corporation division that might be acquired in the future by Ericsson North America Inc., which protects the field of membership of certain credit unions.

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would remove the exclusionary language relating to employees of Rockwell International and Alcatel, and other persons who reside or work within the Telecom Corridor as designated by the Richardson Chamber of Commerce, Richardson, Texas, which protects the field of membership of certain community, occupational or associational-based credit unions.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200303157
Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 21, 2003

Applications to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Texas Dow Employees Credit Union, Lake Jackson, Texas to expand its field of membership. The proposal would permit employees of San Luis Pass Fishing Pier at Freeport, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200303173
Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 21, 2003

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Texas Department of Criminal Justice

Notice to Bidders

The Texas Department of Criminal Justice invites bids for the replacement of the roofing of the Administrative Complex Warehouse Building (a.k.a. BOT Warehouse), Walker County, Huntsville, Texas. The project consists of new construction of roof replacement at, Spur 59, Highway 75 North, Huntsville, Texas. The work includes the sealing of the joints in the tilt concrete panel walls, replacement of all gutters and downspouts, replacement of all rake and eave trim, installation of panel fasteners in the south wall above the loading dock cover, and the sealing of the wall pack light to the wall. The trades involved will be roofers, carpenters, sheet-metal workers, and painters as further shown in the Contract Documents prepared by Price Consulting Incorporated.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of five (5) consecutive years of experience as a roofing Contractor and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project. The Contractor must show a certificate from the approved elastometric manufacturer that they are qualified as an approved installer of the roofing membrane.

B. Contractor must be bondable and insurable at the levels required.

Contractors are required to submit a HUB Subcontracting Plan as detailed in Exhibit I. Failure to submit a completed HUB Subcontracting Plan will result in the bid being rejected from further consideration.

All Bid Proposals must be accompanied by a Bid Deposit in the amount of 5% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of **$50.00 (Fifty Dollars) (non-refundable)** per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer :

Attn: Chris Tally, Jacobs Facilities Incorporated, 5995 Rogerdale Road, Mailstop 2269 Houston, Texas 77072.

Phone: 832-351-7200; Fax: 832-351-7725

A Pre-Bid conference will be held at **11:00AM on June 17, 2003 at the Administration Complex - Warehouse Building, (a.k.a. BOT) Huntsville Texas, followed by a site-visit. ONLY ONE SCHEDULED SITE VISIT WILL BE HELD FOR REASONS OF SECURITY AND PUBLIC SAFETY; THEREFORE, BIDDERS ARE STRONGLY ENCOURAGED TO ATTEND.**

Bids will be publicly opened and read at **2:00PM on July 2, 2003,** in the Contracts and Procurement Conference Room located at Two Financial Plaza, Suite 525, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200303033
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: May 16, 2003

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Texas Commission on Environmental Quality

Notice of Request for Public Comment and Notice of a Public Meeting for 12 Total Maximum Daily Loads and Update to the State Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment draft Total Maximum Daily Loads (TMDLs) concerning legacy pollutants in the Arroyo Colorado and the Donna Reservoir and canal system in Hidalgo and Cameron Counties. The TCEQ will conduct a public meeting to receive comments on the draft TMDLs. This announcement also constitutes notice that the TMDLs will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies under the Federal Clean Water Act, §303(d). A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDLs concerning legacy pollutants in the Arroyo Colorado and the Donna Reservoir and canal system in Hidalgo and Cameron Counties. The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDLs. The commission requests comments on each of the six major components of the TMDLs: problem definition, endpoint identification, source analysis, linkage between sources and receiving waters, margin of safety, and loading allocations. After the public comment period, TCEQ staff may revise the TMDLs, if appropriate. The final TMDLs will then be considered by the commission for adoption. Upon adoption of the TMDLs by the commission, the final TMDLs and a response to all comments will be made available on the TCEQ Web site referenced in the following paragraphs. The TMDLs will then be submitted to EPA Region 6 for approval as updates to the State of Texas Water Quality Management Plan.

A public meeting will be held in Weslaco, Texas on June 25, 2003 at 7:00 p.m. at the Weslaco Public Library, 525 South Kansas Avenue, Weslaco, Texas. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the meeting; however, a commission staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after the meeting.

Written comments should be submitted to Roger Miranda, Texas Commission on Environmental Quality, Office of Environmental Policy, Analysis, and Assessment, MC 150, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., June 30, 2003, and should reference Docket Number 2003-0571-TML. For further information or copies of the draft TMDLs, please contact Mr. Miranda at (512) 239-6278.

Copies may also be obtained via the commission's Web site at *http://www.tnrcc.state.tx.us/water/quality/tmdl* or by calling Mr. Miranda at (512) 239-6278.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting 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-200303131
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 20, 2003

Notice of Request for Public Comment and Notice of a Public Meeting for 14 Total Maximum Daily Loads and Update to the State Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment draft Total Maximum Daily Loads (TMDLs) concerning legacy pollutants in the tidal portion of the San Jacinto River near Houston, Texas, in Harris County. The TCEQ will conduct a public meeting to receive comments on the draft TMDLs. This announcement also constitutes notice that the TMDLs will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies under the Federal Clean Water Act, §303(d). A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDLs concerning legacy pollutants in the tidal portion of the San Jacinto River. The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDLs. The commission requests comment on each of the six major components of the TMDLs: problem definition, endpoint identification, source analysis, linkage between sources and receiving waters, margin of safety, and loading allocations. After the public comment period, TCEQ staff may revise the TMDLs, if appropriate. The final TMDLs will then be considered by the commission for adoption. Upon adoption of the TMDLs by the commission, the final TMDLs and a response to all comments will be made available on the TCEQ Web site referenced in the following paragraphs. The TMDLs will then be submitted to EPA Region 6 for approval as updates to the State of Texas Water Quality Management Plan.

A public meeting will be held in Houston, Texas on June 24, 2003 at 7:00 p.m. at the Leon Grayson Center at 13828 Corpus Christi Street. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the meeting; however, a commission staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after the meeting.

Written comments should be submitted to Jason Leifester, Texas Commission on Environmental Quality, Office of Environmental Policy, Analysis, and Assessment, MC 150, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., June 30, 2003, and should reference Docket Number 2003-0572-TML. For further information regarding the draft TMDLs, please contact Jason Leifester, Office of Environmental Policy, Analysis, and Assessment, (512) 239-6457. Copies of the draft TMDL document can be obtained via the commission's Web site at *http://www.tnrcc.state.tx.us/water/quality/tmdl*, or by calling Jason Leifester at (512) 239-6457. Mr. Leifester may also be reached by e-mail at: jleifest@tceq.state.tx.us.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting 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-200303130
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 20, 2003

Notice of Water Quality Applications

The following notices were issued during the period of May 9, 2003 through May 19, 2003.

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.

RONALD ALLEN BENNER has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 04001, to authorize the discharge of mariculture wastewater at a daily average flow not to exceed 4,000,000 gallons per day via Outfall 001. The applicant operates a mariculture facility. The plant site is located on the east side of County Road 316 approximately 0.25 miles north of the intersection of County Road 304 and County Road 316, approximately 2.2 miles east of the intersection of State Highway 172 and County Road 304, and 3.4 miles south of the intersection of State Highways 35 and 172, near the City of Port Alto, Calhoun County, Texas.

CENTER POINT ENERGY HOUSTON ELECTRIC, LLC which operates the Cypress District Operations & Service Center which provides assistance to various operating departments in the transmission and distribution of electric power, has applied for a renewal of TPDES Permit No. 02608, which authorizes the discharge of sanitary waste commingled with vehicle wash water, floor drainage, air conditioning condensate and storm water, at a daily average flow not to exceed 20,000 gallons per day via Outfall 001. The facility is located at 1808 Huffmeister Road, northwest of the intersection of Huffmeister Road and Cypress-Rosehill Road; and approximately 25 miles northwest of the City of Houston, Harris County, Texas.

CITY OF GLADEWATER has applied for a new permit, Proposed Permit No. 04559, to authorize the land application of sewage sludge for beneficial use on 16.5 acres. This permit will not authorize a dischage of pollutants into waters in the State. The land application site is located adjacent to the south side of Shell Camp Road, approximately 1,400 feet east of Moody Creek in Gregg County, Texas.

CITY OF GROVES has applied for a renewal of TPDES Permit No. 10094-004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,320,000 gallons per day. The facility is located approximately 2,000 feet southeast from the intersection of State Highway 87 and State Highway 73, adjacent to Taft Avenue Extension southeast of the intersection of State Highways 87 and 73 in Jefferson County, Texas.

HAMSHIRE - FANNETT INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 12098-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 56,000 gallons per day. The facility is located approximately 0.6 mile north-northeast of Hamshire High School; 6,300 feet southeast of Interstate Highway 10 crossing of South Fork of Taylor Bayou; and 7,600 feet east-southeast of Interstate Highway 10 at West Hamshire Road in Jefferson County, Texas.

HOUSTON OAKS GOLF MANAGEMENT, L.P. has applied for a renewal of TPDES Permit No. 12402-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located on the Houston Oaks Recreational property, which is approximately 2.5 miles north of the intersection of Hegar Road and Farm-to- Market Road 2920 in Waller County, Texas.

JAVELINA COMPANY which operates a petroleum gas liquids processing plant, has applied for a major amendment to TPDES Permit No. 03137 to authorize removal of effluent limitations for total copper, total silver, and total zinc at Outfall 001; and to remove internal Outfalls 101 and 201. The current permit authorizes the discharge of treated process wastewater, utility wastewater, and storm water runoff on a flow variable basis via Outfall 001. The facility is located at 5314 Interstate Highway 37, on the north side, between McBride Lane and Navigation Boulevard, in the City of Corpus Christi, Nueces County, Texas.

KB HOME LONE STAR LP has applied for a new permit, Proposed Permit No. 14413-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 114,000 gallons per day via subsurface drip irrigation of 27 acres of nonpublic access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site will be located 3700 feet northeast of the intersection of State Highway 71 and Buck Lane in Travis County, Texas.

NORTH ALAMO WATER SUPPLY CORPORATION proposes to operate a reverse osmosis potable water treatment plant, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 04480, to authorize the discharge of reverse osmosis reject water at a daily average flow not to exceed 1,000,000 gallons per day via Outfall 001. The facility site is located on the north side of State Highway 186, approximately 0.6 mile east of the intersection of State Highway 186 and Farm-to-Market Road 1015, and approximately 8.2 miles west of U.S. Highway 77, northeast of the community of Lasara, Willacy County, Texas.

CITY OF PEARLAND has applied for a renewal of TPDES Permit No. 10134-008, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 1,000 feet north of McHard Road, approximately 1.25 miles west of the intersection of McHard Road and State Highway 288 in Brazoria County, Texas.

TOWN OF PROSPER has applied for a major amendment to TPDES Permit No. 10915-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 556,000 gallons per day to an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 300 feet west of the intersection of the St. Louis and San Francisco Railroad and Seventh Street in the town of Prosper in Collin County, Texas.

RAYBURN COUNTRY MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 10788-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 2,000 feet north of the intersection of Recreational Road 255 and Farm-to-Market Road 1007 and 3 miles west of the intersection of U.S. Highway 96 and Recreational Road 255 in Jasper County, Texas.

THE SABINE MINING COMPANY which operates a surface lignite mine, has applied for a major amendment to TPDES Permit No. 02538 to reduce the frequency of monitoring requirements for flow, total suspended solids, total iron, total manganese, and pH at Outfall 001; and reduce the frequency of monitoring requirements for flow and pH at Outfall 101. The current permit authorizes the discharge of storm water runoff and mine pit water from ponds in the active mining area on an intermittent and flow variable basis via Outfall 001; the discharge of storm water runoff and mine pit water from ponds in the post mining area on an intermittent and flow variable basis via Outfall 101; and the discharge of domestic wastewater at a daily average flow not to exceed 6,000 gallons per day via Outfall 002. The facility is located at 6501 Farm-to-Market Road 968 West, south of Interstate Highway 20 on Farm-to-Market Road 968, east of Farm-to-Market Road 450, approximately five miles southeast of the City of Hallsville, Harrison County, Texas.

SAN JACINTO RIVER AUTHORITY has applied for a major amendment to TPDES Permit No. 11658-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 770,000 gallons per day to a daily average flow not to exceed 900,000 gallons per day. The facility is located approximately 2,000 feet east of Interstate Highway 45, approximately 1.5 miles south of Farm-to-Market Road 1488, adjacent to the Missouri Pacific Railroad tracks and an unnamed tributary in Montgomery County, Texas.

TESSENDERLO KERLEY, INC. which operates a plant that produces inorganic agricultural and industrial chemicals and stores/distributes sodium hydrosulfide, acetic acid, ammonia sulfide, and NZN, has applied for a renewal of TPDES Permit No. 03889, which authorizes the discharge of stormwater from process containment pads on an intermittent and flow variable basis via Outfall 001, and non-process area stormwater on an intermittent and flow variable basis via Outfall 002. The facility is located at 1050 Jefferson Road, approximately two miles north of the intersection of Highway 225 and Bearle Street at the Houston Ship Channel terminus of Jefferson Road, in the City of Pasadena, Harris County, Texas.

TM DEER PARK SERVICES, L.L.C. which operates a commercial RCRA permitted hazardous waste treatment, storage, and disposal facility that also conducts organic chemical recycling operations and treats on-site and off-site sanitary wastewaters., has applied for a major amendment to TPDES Permit No. 03937 to add filter back wash as an authorized wastestream to be discharged via Outfall 001 and to remove the untreated, non-contact storm water as an authorized wastestream from Outfall 001. The current permit authorizes the discharge of treated cooling tower blowdown, boiler blowdown, sanitary wastewater (on-site and off-site), and untreated, non-process area storm water at a daily average flow not to exceed 150,000 gallons per day via Outfall 001. The facility is located at 2525 Battleground Road, adjacent to the west side of State Highway 134, approximately two miles north of the intersection of State Highway 134 and State Highway 225 in the City of Deer Park, Harris County, Texas.

CITY OF WALLER has applied for a major amendment to TPDES Permit No. 10310-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 500,000 gallons per day to a daily average flow not to exceed 900,000 gallons per day. The facility is located at 102 Walnut Street, approximately 4,500 feet southeast of the intersection of U.S. Highway 290 and Farm-to-Market Road 362 in Waller County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the permit issued to AEP TEXAS CENTRAL COMPANY, which operates the Victoria Steam Electric Station, to include a downstream temperature monitoring requirement at Outfall 001. The existing permit authorizes the discharge of once through cooling water and previously monitored effluent (low volume waste via internal Outfalls 101 and 201, and cooling tower blowdown via internal Outfall 301) at a daily average flow not to exceed 202,000,000 gallons per day via Outfall 001; cooling tower blowdown and previously monitored effluent (low volume waste and/or metal cleaning waste via internal Outfall 102) at a daily average flow not to exceed 1,200,000 gallons per day via Outfall 002; and groundwater from underground storage tank remediation on a flow variable basis via Outfall 004. The facility is located east of and adjacent to the Guadalupe River, northwest of the intersection of Wharf Street and Bottom Street in the City of Victoria, Victoria County, Texas.

CITY OF CARTHAGE has applied for a minor amendment to the TPDES permit to replace the existing uv disinfection with chlorination/dechlorination of the treated effluent. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,600,000 gallons per day. The facility is located east of the City of Carthage and south of Hoggs Bayou, approximately 1.5 miles east of the intersection of U.S. Highway 59 an 79 in Panola County, Texas.

CITY OF HOUSTON, c/o Department of Public Works and Engineering, has applied for a minor amendment to the TPDES permit to specify monitoring locations for effluent samples. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 995,000 gallons per day. The facility is located approximately 250 feet west of the intersection of Genard Road and Steffani Lane in Harris County, Texas.

TRD-200303134
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 20, 2003

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Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Bellaire	Imaging Centers of Greater Houston LP	L05656	Bellaire	00	04/29/03
Richardson	Siemens Maintenance Services LLC	L05660	Richardson	00	05/06/03
Richardson	Richardson Cardiology Associates	L05667	Richardson	00	05/09/03
Throughout Tx	Northeastern Pavers Inc	L05665	Granbury	00	05/09/03
Throughout Tx	USA Environment LP	L05616	Houston	00	05/09/03
Throughout Tx	Thielsch Engineering Inc	L05643	Hutto	00	05/01/03

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Alice	Physicians and Surgeons Hospital of Alice LP	L02390	Alice	32	05/12/03
Austin	Austin Nuclear Pharmacy Inc	L05591	Austin	02	05/02/03
Austin	Columbia/St Davids Healthcare System LP	L00740	Austin	83	05/19/03
Austin	HTI/ADC Venture	L04910	Austin	33	05/09/03
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	08	05/15/03
Carrollton	Tenet Health System Hospitals Dallas Inc	L03765	Carrollton	39	05/12/03
Carthage	East Texas Medical Center Carthage	L02540	Carthage	31	04/30/03
Dallas	Dallas Cardiology Associates PA	L04607	Dallas	40	05/08/03
Deer Park	Atofina Petrochemicals Inc	L00302	Deer Park	40	05/14/03
Desoto	Vishu Lammata MD PA	L05311	Desoto	08	05/13/03
Edna	Jackson County Hosptial District	L04842	Edna	06	05/01/03
El Paso	Providence Memorial Hospital	L02353	El Paso	75	05/02/03
Freeport	Brazos Pipe & Steel Fabricators Inc	L02186	Freeport	21	05/14/03
Houston	American Diagnostic Tech LLC	L05514	Houston	07	04/30/03
Houston	Houston Northwest Radiotherapy Center	L02416	Houston	26	05/08/03
Houston	The Methodist Hospital	L00457	Houston	112	05/13/03
Houston	Mallinckrodt Medical Inc	L03008	Houston	62	05/13/03
Houston	Sisters of Charity of the Incarnate Word	L02279	Houston	50	05/15/03
Kingsville	Christus Spohn Health System Corporation	L02917	Kingsville	33	04/30/03
Lubbock	Cardiologist of Lubbock PA	L05038	Lubbock	10	04/30/03
McAllen	Cardiovascular Consultants of McAllen PA	L05126	McAllen	14	04/30/03
McKinney	Columbia Medical Center Subsidiary LP	L02415	McKinney	22	05/09/03
Mesquite	Baylor Medical Center – Mesquite	L04914	Mesquite	13	05/12/03
Midland	Herndon OCI Inc	L04861	Midland	07	05/07/03
Mission	Valley Nuclear Incorporated	L04521	Mission	14	05/08/03
Odessa	Pro Inspection Inc	L03906	Odessa	17	05/12/03
Orange	Cardinal Health 412 Inc	L04785	Orange	24	05/08/03
Paris	Saleem Mallick MD PA	L05132	Paris	07	05/09/03
Plano	Network Cancer Care of Denton	L05348	Plano	12	05/08/03
Port Arthur	Huntsman Corporation	L04067	Port Arthur	14	05/07/03
Richardson	Richardson Hospital Authority	L02336	Richardson	39	05/12/03

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	Petnet Pharmaceuticals Inc	L05569	San Antonio	05	05/09/03
San Antonio	South Texas Blood & Tissue Center	L04381	San Antonio	08	04/30/03
San Antonio	VHS San Antonio Partners LP	L00455	San Antonio	119	05/13/03
San Antonio	VHS San Antonio Partners LP	L00455	San Antonio	120	05/15/03
Sherman	Sherman Heart Group LLP	L05498	Sherman	02	05/02/03
The Woodlands	Memorial Hospital the Woodlands	L03772	The Woodlands	34	05/12/03
Throughout Tx	Austin Bridge & Road	L04629	Dallas	13	04/30/03
Throughout Tx	Century Inspection Inc	L00062	Dallas	97	05/06/03
Throughout Tx	Ion Beam Application Inc	L03851	Fort Worth	30	04/30/03
Throughout Tx	Ellerbee-Walczak Inc	L04440	Fort Worth	08	05/15/03
Throughout Tx	Monitoring Services	L04501	Friendswood	07	05/14/03
Throughout Tx	Bonded Inspections Inc	L00693	Garland	64	04/30/03
Throughout Tx	Atser Corporation	L04741	Houston	17	05/13/03
Throughout Tx	Cooperheat – MQS Inc	L00087	Houston	103	05/07/03
Throughout Tx	H & G Inspection Company Inc	L02181	Houston	161	05/01/03
Throughout Tx	Metco	L03018	Houston	133	05/01/03
Throughout Tx	Metco	L03018	Houston	134	05/08/03
Throughout Tx	Stork Southwestern Laboratories Inc	L00299	Houston	115	05/14/03
Throughout Tx	H & G Inspection Company Inc	L02181	Houston	162	05/14/03
Throughout Tx	Longview Inspection Inc	L01774	La Porte	193	05/13/03
Throughout Tx	Granite Construction Company	L04923	Lewisville	06	04/30/03
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	19	05/07/03
Throughout Tx	Warrington Inc	L03074	Pflugerville	25	04/30/03
Throughout Tx	Weaver Services	L01489	Snyder	23	05/14/03
Throughout Tx	Lamco & Associate	L05152	Woodlands	04	05/07/03
Tomball	Tomball Hospital Authority	L02514	Tomball	26	05/13/03
Tyler	Allens Nutech Inc	L05511	Tyler	03	05/07/03
Tyler	Cardiovascular Associates of East Texas PA	L04800	Tyler	10	05/02/03
Tyler	East Texas Medical Center	L00977	Tyler	97	05/05/03
Tyler	Trinity Mother Frances Health System	L01670	Tyler	100	05/05/03

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Mission	Valley Nuclear Incorporated	L04521	Mission	15	05/12/03
Throughout Tx	Murphrees Tool Company Inc	L04195	Midland	04	05/14/03

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Denison	General Mills Inc	L03727	Denison	13	05/14/03
Garland	Garland Physicians Hospital LTD	L02333	Garland	29	05/13/03
Houston	Petnet Pharmaceuticals	L05342	Houston	04	05/06/03
Paris	Christus St Josephs Health System	L02457	Paris	20	05/02/03
Throughout Tx	James Construction Group LLC	L05437	Baton Rouge	02	05/02/03
Throughout Tx	Duval & Associates Consulting & Construction Company	L05234	Garland	01	05/07/03

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
El Paso	El Paso Eye Surgeons PA	L01954	El Paso		05/15/03

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC), Chapter 289, the Texas Department of Health (department), Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC, Chapter 289. In granting termination of licenses, the department has determined that the licensee has properly decommissioned its facilities according to the applicable requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200303115
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 20, 2003

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Texas Health and Human Services Commission

Notice of Proposed Medicaid Provider Reimbursement Rate and Public Hearing

Proposed Medicaid Provider Payment Rates, State Schools-Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program

Proposal: As single state agency for the state Medicaid program, the Texas Health and Human Services Commission proposes two adjustments to rates for state schools operated by the Texas Department of Mental Health Mental Retardation. The proposed rates will reimburse state schools for the costs of Quality Assurance Fees that will be assessed to state schools following enactment of emergency legislation, currently under consideration by the Texas Legislature, that makes such fees applicable to state schools effective September 01, 2002. The first proposed payment rate will be effective June 1, 2003 through July 31, 2003, in order to reimburse state schools for any retroactive assessments of the Quality Assurance Fee from September 1, 2002 through July 31, 2002. The second proposed payment rate is proposed to take effect August 1, 2003, and will enable HHSC to reimburse state schools for the estimated cost of Quality Assurance Fees to be assessed beginning August 31, 2003.

Proposed Rate effective June 1, 2003 - July 31, 2003 - $350.86

Proposed Rate effective August 1, 2003 - $281.24

Methodology and Justification: The proposed rates are determined in accordance with 1 T.A.C. §355.706(1) and (2), relating to adjustments to reimbursement rates when changes in law, regulations, or economic factors result in additional allowable costs that are not reflected in current reimbursement rates. The Texas Legislature currently is considering changes to Chapter 252, subchapter H, relating to a Quality Assurance Fee for ICF/MR providers (see House Bill No. 7 and House Bill No. 2292, 78th Leg.), which would apply the Quality Assurance Fee retroactively to state schools. The proposed rates are contingent upon the emergency enactment and approval of such legislation, thereby giving such legislation immediate effect.

In accordance with §355.706, HHSC has determined that, if enacted to have immediate effect, the proposed legislation would require the Quality Assurance Fee to be applied to all state schools, would be beyond the control of the providers, and would result in additional allowable incurred costs that are not currently reflected in the cost reporting database or current rates. For the period of September 1, 2002, through July 31, 2003, HHSC proposes a rate of $350.86, which allocates the estimated additional cost of the Quality Assurance Fee over a 2-month period beginning June 1, 2003. The estimated Quality Assurance Fee liability for the rate period beginning August 1, 2003, is reflected in the second proposed rate.

Public Hearing: A public hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The public hearing will be held on Tuesday, June 10, 2003 at 1:30 p.m. in the Public Hearing Conference Room of the Riata Building III, 1st Floor. Enter the building at 12545 Riata Vista Circle, Austin,

TX 78727 and obtain a pass from Security for the Public Hearing Conference Room.

Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Mr. Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Mr. Arreola, HHSC Rate Analysis, MC H-400, Riata Building, 12555 Riata Vista Circle, Austin, Texas 78727-6404. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 685-3104.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101, telephone number (512) 685-3124, by June 9, 2003, so that appropriate arrangements can be made.

TRD-200303174
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: May 21, 2003

State Medicaid Office - Public Notice

The Health and Human Services Commission, State Medicaid Office, has received approval from the Centers for Medicare and Medicaid Services to amend the Title XIX Medical Assistance Plan by Transmittal Number 03-04, Amendment Number 639.

The amendment modifies the reimbursement methodology for Primary Home Care (PHC) services to combine two areas for reimbursement determination. In addition, it also allows the Health and Human Services Commission (HHSC) to use recouped funds from the spending requirement of the attendant compensation rate enhancement to pay qualifying contracts that have attendant compensation costs exceeding the amount paid. The amendment is effective January 1, 2003.

If additional information is needed, please contact Carolyn Pratt, Health and Human Services Commission, at 512-685-3127.

TRD-200303091
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: May 19, 2003

State Medicaid Office - Public Notice

The Health and Human Services Commission, State Medicaid Office, has received approval from the Centers for Medicare and Medicaid Services to amend the Title XIX Medical Assistance Plan by Transmittal Number 03-05, Amendment Number 640.

The amendment modifies the reimbursement methodology for Day Activity and Health Services (DAHS) to use recouped funds from the spending requirement of the attendant compensation rate enhancement to pay qualifying contracts that have attendant compensation costs that exceed the amount paid. The amendment is effective January 1, 2003.

If additional information is needed, please contact Carolyn Pratt, Health and Human Services Commission, at 512-685-3127.

TRD-200303090
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: May 19, 2003

Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Bonds (Stonebrook Villas) Series 2003

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at C.T. Eddins Elementary School, 311 Peregrine Drive, McKinney, Texas 75070, at 6:00 p.m. on June 2, 2003 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Stonebrook Villas Housing, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: a fenced and gated 224-unit conventional quality multifamily residential rental development to be constructed on approximately 10.43 acres located at the northeast corner of the intersection of Peregrine Drive and Virginia Parkway, McKinney, Texas 75070. The Development will be initially owned and operated by the Borrower. The manager of the Development will be Southwest Housing Management Corporation, Attn: Beth Thompson, Vice President, (214) 891-1402. For information about the Development prior to the hearing contact Southwest Housing Development Corporation, Attn: Jeff Spicer, Senior Vice President, (214) 891-7838.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213 and/or rmeyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200303166
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 21, 2003

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by METROPOLITANA COMPANIA DE SEGUROS, S.A., a Mexican casualty company. The home office is in Los Morales, Mexico.

Application to change the name of WORLDWIDE DIRECT AUTO INSURANCE COMPANY to RESPONSE WORLDWIDE DIRECT AUTO INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Columbia, Ohio.

Application to change the name of WOMEN'S LIFE INSURANCE COMPANY OF AMERICA to LONE STAR LIFE INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Richardson, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200303031
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 15, 2003

Notice

Notice of Request for Qualifications for Special Deputy Receivers

The Texas Department of Insurance ("TDI"), an agency of the State of Texas, will be issuing a Request for Qualifications ("RFQ") on or about June 2, 2003, to obtain responses from individuals or legal entities interested in providing services as a Special Deputy Receiver ("SDR"). An SDR acts on behalf of the Commissioner of Insurance in his capacity as the Receiver of an insurer that is placed in receivership by the courts. Duties and activities under control of an SDR may include

Obtaining control of the insurer's operation, and identifying and securing property and records

Marshalling, evaluating, and liquidating assets

Supervising litigation filed by and against the receivership estate

Operating information systems and extracting data

Investigating the liability of any parties responsible for the insurer's insolvency, and identifying any preferential transfers

Providing notice of the receivership to claimants and interested parties

Coordinating the referral of claims to guaranty associations, and handling claims against the receivership estate

Distributing assets to creditors with approved claims

Filing pleadings, business plans and other reports

An Applicant's approval to be an Approved Contractor will be valid only during the term of this RFQ, which will commence on or about September 1, 2003, and expire on or about August 31, 2006. Following the expiration of this three-year term, all Approved Contractors will be required to qualify in accordance with a subsequent RFQ in order to submit bid proposals issued after the RFQ term. TDI reserves the right to issue other RFQs for SDRs to add Approved Contractors, if needed, or to obtain bids for similar or related services, at any time during the term of this RFQ.

In the event that the Commissioner determines that an SDR should be appointed in a receivership proceeding during the term of this RFQ, he will issue a Request for Proposal ("RFP"). Only those individuals or legal entities that become qualified in accordance with this RFQ ("Approved Contractors") will have an opportunity to submit a bid proposal in response to the RFP.

Contact

Parties interested in responding to this RFQ may contact Scott Kyle, Financial Program SDR Process, Texas Department of Insurance, P.O. Box 149104, Mail Code 305-2C, Austin TX 78714, telephone (512) 322-3467, e-mail Scott.Kyle@tdi.state.tx.us, to obtain a copy of the RFQ Application/Form. The RFQ Application/Form will also be available electronically on TDI's website at www.tdi.state.tx.us, and on the Electronic Business Daily at http://esbd.tbpc.state.tx.us.

Evaluation Criteria

Submissions will be evaluated on the basis of the criteria set forth in the RFQ.

Closing Date

Submissions must comply with all requirements of the RFQ, and must be received by the designated contact person no later than 3:00 p.m. on August 1, 2003. Submissions received after that time and date will not be considered.

Note

TDI reserves the right to accept or reject any or all submissions. TDI is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of a subsequent RFP. TDI is not responsible for any costs incurred in responding to this RFQ or any subsequent RFP.

TRD-200303149
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 20, 2003

Texas Lottery Commission

Instant Game Number 406 "11th Anniversary Game"

1.0 Name and Style of Game.

A. The name of Instant Game No. 406 is "11th ANNIVERSARY GAME". The play style in Game 1 is "three in a line". The play style in Game 2 is "yours beats theirs". The play style in Game 3 is "key/number symbol match". The play style in Game 4 is "match up". The play style in Game 5 is "key/number symbol match". The play style in Game 6 is "add up". The play style in Game 7 is "match up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 406 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 406.

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, $250, $500, $1,000, $10,000, $100,000, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,12, 13, 14, 15, SINGLE SYMBOL, DOUBLE SYMBOL, FAVOR SYMBOL, CAKE SYMBOL, ROCKET SYMBOL, ICE CREAM CONE SYMBOL,

CHERRY SYMBOL, BANANA SYMBOL, APPLE SYMBOL, LEMON SYMBOL, STAR SYMBOL, DOLLAR SIGN SYMBOL, HAT SYMBOL, CANDLE SYMBOL, MUSIC SYMBOL, BALLOON SYMBOL, BOW SYMBOL, NOISE MAKER SYMBOL, GOLD BAR SYMBOL, MONEY BAG SYMBOL, STACK OF BILLS SYMBOL, STACK OF COINS SYMBOL, NOTE 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. 406 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$250	TWO FTY
$500	FIV HUND
$1,000	ONE THOU
$10,000	10 THOU
$100,000	100 THOU
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
FAVOR SYMBOL	FAVR
CAKE SYMBOL	CAKE
ROCKET SYMBOL	RCKT
ICE CREAM CONE SYMBOL	ICEC
HAT SYMBOL	HAT
CANDLE SYMBOL	CANDLE
MUSIC SYMBOL	MUSIC
BALLOON SYMBOL	BLLN
BOW SYMBOL	BOW
NOISE MAKER SYMBOL	NOISE
GOLD BAR SYMBOL	GOLD
MONEY BAG SYMBOL	$BAG
STACK OF BILLS SYMBOL	BILLS
STACK OF COINS SYMBOL	STACK
NOTE SYMBOL	NOTE
CHERRY SYMBOL	CHRY
BANANA SYMBOL	BANA
APPLE SYMBOL	APLE
LEMON SYMBOL	LEMN
STAR SYMBOL	WIN$20
DOLLAR SIGN SYMBOL	WIN$50
SINGLE SYMBOL	SINGLE
DOUBLE SYMBOL	DOUBLE

E. Retailer Validation Code - Three (3) 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. 406 - 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, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, $250, or $500.

I. High-Tier Prize - A prize of $1,000, $10,000, or $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 22 (twenty-two) digit number consisting of the three (3) digit game number (406), 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: 406-0000001-000.

L. Pack - A pack of "11th ANNIVERSARY GAME" Instant Game tickets contain 75 (seventy-five) tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate from pack to pack. Fanfold A: ticket front 000 will be the top ticket and 074 back will be on the last page. Fanfold B: ticket back 000 will be on the top and ticket front 074 will be on the last page.

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 "11th ANNIVERSARY GAME" Instant Game No. 406 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 "11th ANNIVERSARY GAME" Instant Game is determined once the latex on the ticket is scratched off to expose 57 (fifty-seven) play symbols. In Game 1, if the player finds 3 identical favor symbols either diagonally, vertically, or horizontally, the player will win the prize shown. In Game 2, if the player's symbol designated as YOUR NUMBER is greater than the player's symbol designated as THEIR NUMBER within the game, the player will win the prize indicated. In Game 3, if the player finds the play symbol word "DOUBLE" in the Bonus the player will double the prize indicated on the ticket. In Game 4, if the player gets 3 identical amount symbols, the player will win that amount. In Game 5, if the player gets a "star" symbol, the player will win the prize indicated. If the player gets a money sign symbol, the player will win the prize indicated. In Game 6, if the player adds up all of the play symbols and the total of the player's YOUR NUMBERS amount is equal to 7 or 11 within the game, the player will win the prize indicated. In Game 7, if the player's identical YOUR SYMBOLS match within a game, the player will win the prize shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 57 (fifty-seven) 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 57 (fifty-seven) 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 57 (fifty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 57 (fifty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game 1: The favor symbol will only appear in a line, diagonal or row as dictated by the prize structure.

C. Game 1: The favor symbol will be the ONLY symbol to appear in a line, diagonal or row.

D. Game 1: Each game will have at least 2 favor symbols.

E. Game 2: No duplicate non-winning prize symbols in a game.

F. Game 2: No duplicate non-winning games on a ticket.

G. Game 2: No ties within a game.

H. Game 3: The DOUBLE symbol will only appear as dictated by the prize structure.

I. Game 4: No 4 or more like symbols in a game.

J. Game 4: No three or more pairs in a game.

K. Game 5: The star and money symbol will only appear as dictated by the prize structure.

L. Game 6: No duplicate non-winning games on a ticket (symbols in either order).

M. Game 6: No duplicate non-winning prize symbols in a game.

N. Game 7: No duplicate non-winning games on a ticket.

O. Game 7: No duplicate non-winning prize symbols in a game.

2.3 Procedure for Claiming Prizes.

A. To claim a "11th ANNIVERSARY GAME" 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 a "11th ANNIVERSARY GAME" 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 a "11th ANNIVERSARY GAME" 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 "11th ANNIVERSARY GAME" 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 "11th ANNIVERSARY GAME" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,010,275 tickets in the Instant Game No. 406. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 406 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10.00	842,818	3.57
$15.00	160,429	18.76
$20.00	130,564	23.06
$50.00	60,125	50.07
$100.00	21,159	142.27
$250	5,006	601.33
$500	1,695	1,775.97
$1,000	40	75,256.88
$10,000	6	501,712.50
$100,000	3	1,003,425.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.46. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 406 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. 406, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200303100
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 19, 2003

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Instant Game Number 415 "Just for You"

1.0 Name and Style of Game.

A. The name of Instant Game No. 415 is "JUST FOR YOU". The play style is "key number/symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 415 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 415.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100, $1,000, BALLOON SYMBOL, MUSIC SYMBOL, HAT SYMBOL, HORN SYMBOL, FAVOR SYMBOL, NOISE MAKER SYMBOL, CAKE 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. 415 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU
BALLOON SYMBOL	BLLN
MUSIC SYMBOL	MUSIC
HAT SYMBOL	HAT
HORN SYMBOL	HORN
FAVOR SYMBOL	FAVOR
NOISE MAKER SYMBOL	NOISE
CAKE SYMBOL	CAKE

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. 415 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (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 $1.00, $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00, or $100.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (415), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 415-0000001-000.

L. Pack - A pack of "JUST FOR YOU" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000-004 will be on the first page, tickets 005-009 will be on the next page and so forth with tickets 245-249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "JUST FOR YOU" Instant Game No. 415 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 "JUST FOR YOU" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If the player's YOUR SYMBOL matches the designated LUCKY SYMBOL, the player will win the prize indicated. 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 nine (9) 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 nine (9) 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 nine (9) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the nine (9) 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. No duplicate non-winning Your Symbols play symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "JUST FOR YOU" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present

the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "JUST FOR YOU" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JUST FOR YOU" 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 "JUST FOR YOU" 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 "JUST FOR YOU" 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 20,215,250 tickets in the Instant Game No. 415. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 415 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	2,425,903	8.33
$2	889,441	22.73
$4	565,940	35.72
$5	161,736	124.99
$10	121,318	166.63
$20	80,861	250.00
$40	39,945	506.08
$100	2,544	7,946.25
$1,000	168	120,328.87

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.71. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 415 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. 415, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200303099
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 19, 2003

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Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, June 4, 2003, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and Daniel Zenner to hear alleged violations of Sections 7(b) and 7(c) of the Act and Sections 80.123(b) and 80.123(c) of the Rules by selling/negotiating to sell two or more homes in a twelve month period without obtaining, maintaining, or possessing a valid retailer's and/or broker's license. SOAH 332-03-2953. Department MHD2003000157-HB.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200303017
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: May 15, 2003

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificates of Operating Authority

On May 15, 2003, Global Crossing Local Services, Incorporated, and Global Crossing Telemanagement, Incorporated filed an application with the Public Utility Commission of Texas (commission) to amend their service provider certificates of operating authority (SPCOA) granted in SPCOA Certificate Numbers 60148 and 60149. The Applicants intends to reflect a change in ownership/control from Global Crossing Limited, to GC Acquisition Limited.

The Application: Application of Global Crossing Local Services, Incorporated, and Global Crossing Telemanagement, Incorporated for an Amendment to Their Service Provider Certificates of Operating Authority, Docket Number 27808.

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 June 4, 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 27808.

TRD-200303037
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2003

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Notice of Application for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 12, 2003, to amend its designation as an eligible telecommunications carrier (ETC) pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Santa Rosa Telephone Cooperative, Inc. to Amend its Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.418. Docket Number 27787.

The Application: Santa Rosa is requesting ETC designation in order to be eligible to receive federal universal service support under 47 U.S.C. §254 designation to include the Holliday and Kamay exchanges in which Valor Telecommunications of Texas, LP is the incumbent provider in the state of Texas. Santa Rosa holds Service Provider Certificate of Operating Authority Number 60373. The proposed effective date is June 30, 2003.

This application has been designated Docket Number 27787 by the commission. Persons who wish to comment on this application should notify the Public Utility Commission of Texas by June 19, 2003. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll-free number (888) 782-8477. All correspondence should refer to Docket Number 27787.

TRD-200303159
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 21, 2003

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On May 15, 2003, FairPoint Communications Solutions Corporation 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 60334. Applicant intends to relinquish its certificate.

The Application: Application of FairPoint Communications Solutions Corporation for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 27807.

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 June 4, 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 27807.

TRD-200303036
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2003

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Notice of Application to Amend Certificated Service Area Boundaries within Kendall County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on April 25, 2003, to amend certificated service area boundaries within Kendall County, Texas.

Docket Style and Number: Application of Bandera Electric Cooperative, Incorporated for an Amendment to its Certificated Service Area Boundaries within Kendall County, City of Boerne. Docket Number 27699.

The Application: On April 25, 2003, Bandera Electric Cooperative, Inc. (BEC) filed an application to amend certificated service area boundaries within Kendall County. The City of Boerne agrees that BEC should provide electric service to the Villas at Hampton Place Subdivision, a portion of which is located within the City of Boerne's service territory. BEC has an existing single phase line extending into the area to be served.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by June 6, 2003, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 27699.

TRD-200303148
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 20, 2003

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Notice of Application to Amend Designation as an Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 12, 2003, to amend designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of Santa Rosa Telephone Cooperative, Inc. to Amend its Designation as an Eligible Telecommunications Provider (ETP) Pursuant to P.U.C. Substantive Rule §26.417. Docket Number 27786.

The Application: Santa Rosa Telephone Cooperative, Inc. (Santa Rosa) received ETP designation in Docket Number 21489 and is now requesting that designation be amended to include the Holliday and Kamay exchanges in which Valor Telecommunications of Texas, LP is the incumbent provider in the state of Texas. Santa Rosa holds Service Provider Certificate of Operating Authority Number 60373. The proposed effective date is June 30, 2003.

This application has been designated Docket Number 27786 by the commission. Persons who wish to comment on this application should notify the Public Utility Commission of Texas by June 19, 2003. Requests for further information should be mailed to the Public Utility

Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll-free number (888) 782-8477. All correspondence should refer to Docket Number 27786.

TRD-200303158
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 21, 2003

Notice of Petition for Rulemaking Regarding Billing and Collection of Transition Charges and Competition Transition Charges

The Public Utility Commission of Texas (commission) received a petition for rulemaking on May 20, 2003. The petition is assigned Project Number 27837, *Petition for Rulemaking Requesting Adoption of a New Rule Regarding Billing and Collection of Transition Charges and Competition Transition Charges*. Under the Administrative Procedure Act, Texas Government Code §2001.021, the commission must either deny the petition in writing, stating its reasons for denial, or initiate a rulemaking proceeding not later than the 60th day after the date the petition is filed.

Petitioners are: Texas Electric Cooperative, Inc., Big County Electric Cooperative, Inc., Bluebonnet Electric Cooperative, Inc., Comanche Electric Cooperative Association, Cooke County Electric Cooperative Association, Grayson-Collin Electric Cooperative, Inc., HILCO Electric Cooperative, Inc., J-A-C Electric Cooperative, Inc., Lamar County Electric Cooperative Association, Lyntegar Electric Cooperative, Inc., McLennan County Electric Cooperative, Inc., Southwest Rural Electric Association, Inc., Tri-County Electric Cooperative, Inc., Trinity Valley Electric Cooperative, Inc., United Cooperative Services, Wise Electric Cooperative, Inc., Wood County Electric Cooperative, Inc., Texas Public Power Association, City of Austin, doing business as Austin Energy, Denton Municipal Electric, and City of Electra.

Petitioners request the commission to adopt a new rule regarding the billing and collection of transition charges related to stranded investment from retail customers who switched providers on or after May 1, 1999, in multiply certificated areas of electric utilities, electric cooperatives, and municipally-owned utilities. The rule proposed by petitioners does not apply to switchovers involving only electric utilities. The complete text of the petition and proposed rule is available through the commission's Central Records Division or via the Interchange on the commission's website at http://www.puc.state.tx.us under Project Number 27837.

Petitioners stated that the rule is necessary to implement the provisions of the Public Utility Regulatory Act (PURA) §§39.252, 39.303, 40.055 and 41.055, which provide that electric utilities, electric cooperatives, and municipally-owned utilities may recover their respective stranded costs and competition transition charges as nonbypassable charges. Petitioners asserted that the need for the rule is urgent as a number of switchover customers must soon be billed for transition charges authorized pursuant to financing orders granted by the commission.

Comments on the petition may be filed no later than 3:00 p.m. on Friday, June 20, 2003, by filing (16 copies) with the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments should be organized in a manner consistent with the organization of the proposed rule. All inquiries and comments concerning this petition for rulemaking should refer to Project Number 27837.

Questions regarding this notice of petition should be directed to William Huie, Attorney, Legal and Enforcement Division, at (512) 936-7379. 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.

TRD-200303160
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 21, 2003

Public Notice of Amendment to Interconnection Agreement

On May 14, 2003, Southwestern Bell Telephone, L.P. doing business as SBC Texas and PhoneCo, 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 27796. 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 27796. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 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 27796.

TRD-200303074
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2003

Public Notice of Amendment to Interconnection Agreement

On May 15, 2003, Southwestern Bell Telephone, L.P. doing business as SBC Texas and Excel Telecommunications, Incorporated, 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 27810. 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 27810. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 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 27810.

TRD-200303078
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2003

Public Notice of Amendment to Interconnection Agreement

On May 15, 2003, Southwestern Bell Telephone, L.P. doing business as SBC Texas and Vartec Telecom, Incorporated, 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 27811. 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 27811. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 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 27811.

TRD-200303079
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2003

Public Notice of Amendment to Interconnection Agreement

On May 15, 2003, Southwestern Bell Telephone, L.P. doing business as SBC Texas and Pathway Com-Tel, Incorporated, 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 27812. 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 27812. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 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 27812.

TRD-200303080
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2003

Public Notice of Amendment to Interconnection Agreement

On May 15, 2003, Southwestern Bell Telephone, L.P. doing business as SBC Texas and Level 3 Communications, L.L.C., Incorporated, 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 27813. 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 27813. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 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 27813.

TRD-200303081
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2003

Public Notice of Amendment to Interconnection Agreement

On May 16, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and VoIP Services, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27817. 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 27817. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 18, 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, PO 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 27817.

TRD-200303110
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 19, 2003

Public Notice of Amendment to Interconnection Agreement

On May 16, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and VoIP Services, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27820. 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 27820. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 18, 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, PO 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 27820.

TRD-200303111
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 19, 2003

Public Notice of Amendment to Interconnection Agreement

On May 16, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Advance Telephone Services, 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 27821. 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 27821. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 18, 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, PO 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 27821.

TRD-200303112
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 19, 2003

Public Notice of Interconnection Agreement

On May 14, 2003, Peoples Telephone Cooperative, Incorporated and Nextel Communications, Incorporated 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 27795. 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 27795. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 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 27795.

TRD-200303073
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2003

Public Notice of Interconnection Agreement

On May 14, 2003, Southwestern Bell Telephone, L.P. doing business as SBC Texas and Snappy Phone 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 27797. 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 27797. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 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 27797.

TRD-200303075
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2003

Public Notice of Interconnection Agreement

On May 15, 2003, TXU Communications Telephone Company and Comm South Companies, 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 27803. 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 27803. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 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 27803.

TRD-200303076
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2003

Public Notice of Interconnection Agreement

On May 15, 2003, Fort Bend Telephone Company doing business as TXU Communications and Comm South Companies, 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 27804. 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 27804. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 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 27804.

TRD-200303077
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2003

Public Notice of Workshop on Forward Market Structure for the ERCOT Market

The Public Utility Commission of Texas (commission) will hold a public workshop in Project Number 27678, *Forward Market Structure for ERCOT Market*, on Friday, June 13, 2003, from 9:30 a.m. to 4:30 p.m. The workshop will be held in Room 1-100 (conference room), located on the first floor of Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

The objective of the workshop is to examine the role of forward markets in increasing sellers' and buyers' choices and market liquidity, providing appropriate hedging instruments, improving price discovery, and providing accurate and timely forward price curves and indices to facilitate bilateral contracts and reduce the abuse of market power in bilateral market. The workshop will also look into how forward market structures work in other commodity markets and seek to identify important features of well-functioning forward markets (Panel I).

The workshop will discuss the feasible options for linking a forward market and an ISO real-time operation, identify potential issues with different options, and assess the impacts on ISO reliability operations (Panel II).

The workshop will discuss desirable features of a forward market in Texas and lay out options for further consideration. It will also identify the barriers to creating an ERCOT forward market and actions that

should be taken to achieve adequate trading volume in a forward market (Panel III).

Questions about the workshop or the panels and discussion points should be directed through e-mail to Sam Zhou, Market Oversight Division, at Sam.Zhou@puc.state.tx.us.

This workshop will include the following three panel discussions:

Agenda

Panel Discussions

I. Introduction: Definition, Functions and Structure of Forward Markets for Electricity (9:30 a.m. - 11:30 a.m.)

1. Definition

2. Role of forward markets in risk management

3. Functions: hedging, liquidity, price discovery, transparency, forward curves/indices, clearing service

4. Existing electricity forward market structures and their performance to date

i. "European Style" forward market structure

ii. "U.S. Style" forward market structure

5. How should the disclosure of information and trading practices be regulated? What measures should be taken with respect to forward markets to prevent the exercise of market power?

6. Best practices--characteristics of efficient forward markets and how to gain adequate liquidity

Short Presentation: Dr. Sam Zhou (PUCT), Dr. Ehud Ronn (UT)

Panelists: Mr. Bob Levin (NYMEX), Dr. Dariush Shirmohammadi (Americas OM), Intercontinental Exchange (ICE) representative (Invited), Mr. John Melby (Automated Power Exchange), Art Simonson (S&P), MW Daily representative (Invited), Bloomberg Representative (Invited)

II. Forward Markets and the Link to ISO Operation (1:00 p.m. - 2:15 p.m.)

1. What are the feasible options for linking a forward market and an ISO real-time operation?

2. What are potential issues with different options?

3. What could be the determinants to choose different options?

4. Should a day-ahead spot market operate with security constrained, economic dispatch?

5. Can a forward market help an ISO resolve reliability issues?

Short Presentation: Dr. Shmuel Oren, Mr. Ray Giuliani (ERCOT)

Panel Members: Mr. Bob Levin (NYMEX), Dr. Dariush Shirmohammadi (Americas OM), Intercontinental Exchange (ICE) representative (Invited), Mr. John Melby (Automated Power Exchange), Art Simonson (S&P), MW Daily representative (Invited), Bloomberg Representative (Invited)

III. Desirable Features of a Forward Market within the "TEXAS Model" (2:30 p.m. - 4:30 p.m.)

1. Should ERCOT adopt a "European Style" forward market structure or "U.S. Style" forward market structure?

2. What features should the forward market have in the "Texas Model"?

i. Pure energy market versus PJM style day-ahead market with security constrained, economic dispatch/day-ahead unit commitment?

ii. Single versus continuous multiple round auction?

iii. Physical day-ahead/hour-ahead spot market versus financial market?

iv. ISO-run versus third party power exchange?

3. What are the obstacles to creating an ERCOT forward market? What actions should be taken to achieve adequate trading volume in the forward market?

4. Impacts of a well functioning forward market on retail competition?

5. What are the implementation options, related costs, and who should pay the costs?

Short Presentation: Mr. Clayton Greer (WMS), Mr. Vanus Priestley (ARM Representative)

Panel Members: Dr. Shmuel Oren, TXU Representative, Reliant Representative, LCRA Representative, City of San Antonio Representative, ERCOT Representative, Representatives from other ERCOT market participants

(Each short presentation is limited to 15 minutes)

TRD-200303176
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 21, 2003

Request for Information to Conduct Audit of the Texas Universal Service Fund for Fiscal Years 2002 - 2003

The Public Utility Commission of Texas (commission or PUCT) is issuing a Request for Information for interested firms able to conduct an audit of the Texas Universal Service Fund, for fiscal years 2002 and 2003 (RFI).

This audit is being undertaken pursuant to the commission's statutory responsibility to administer the Texas Universal Service Fund. Further information regarding the administration of this fund may be found in the Texas Utilities Code, Chapter 56, and the commission's Substantive Rule §26.420 (16 Texas Administrative Code §26.420). The commission will use the audit to ensure that the Texas Universal Service Fund is being managed and administered in compliance with the relevant rules and procedures (see Audit Objectives and Scope, Sections 2.1 and 2.2 of the RFI) by the contracted administrator, National Exchange Carrier Association (NECA).

The offices of NECA and the records to be audited are located in Whippany, New Jersey.

This request for information is in compliance with Texas Government Code, Chapter 2254, regarding the procurement of professional services. Professional services may not be procured through competitive bidding, but must be selected on the basis of demonstrated competence and qualification to perform the services requested for a fair and reasonable price.

The commission has utilized the firm of Warinner, Gesinger & Associates of Lenexa, KS, to provide these services in prior years. Warinner, Gesinger & Associates is eligible to submit a response to the request for information, including a bid for its services. In the past the PUCT has paid between $33,000 and $38,000 per audit year for the same or similar services.

To be considered, the response must arrive at the commission on or before 3:00 p.m., C.S.T., Monday, June 9, 2003. The due date for each

final Audit Report will be approximately three months from the beginning date of the audit.

Respondents must provide statements affirming the following: The auditor is properly licensed for public practice as a certified public accountant; the auditor meets the independence requirements of the Standards for Audit of Governmental Organizations, Programs, Activities and Functions, as amended, published by the U.S. General Accounting Office; and the auditor does not have a record of substandard audit work.

The Public Utility Commission of Texas is requesting proposals from entities with any relevant audit experience in the telecommunications industry. Entities that meet the definition of a historically underutilized business (HUB), as defined in Chapter 2161, Texas Government Code, §2161.001, are encouraged to submit a proposal.

The Public Utility Commission of Texas requests responses expressing and interest in conducting a financial and management audit of the Texas Universal Service Fund) for each of the fiscal years ending August 31, 2002 and 2003. The audit shall cover all the administration of the Texas Universal Service Fund.

A complete copy of the RFI for a financial audit of the Texas Universal Service Fund for fiscal years 2002 and 2003 may be obtained by writing Lisa Trueper, Purchaser, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or e-mail lisa.trueper@puc.state.tx.us, or faxing to (512) 936-7058. The RFI will be posted on the Electronic Business Daily and mailed to a list of potential respondents prepared by PUCT staff from the Central Master Bidders List, which is available for review at www.tbpc.state.tx.us. You may also down load the RFI from the Electronic Business Daily website, www.marketplace.state.tx.us.

Deadline for Receipt of Proposals. Responses must be received no later than 3:00 p.m. on Monday, June 9, 2003. Please provide three copies of your response. Please deliver your response, Marked "CONFIDENTIAL" to Project Number 21208, Central Records Division, The Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78701 or mail your response marked "CONFIDENTIAL" to Project 21208, Central Records Division, P.O. Box 13326, Austin, Texas 78711-3326. Responses received after 3:00 p.m. on Monday, June 9, 2003, will not be considered.

TRD-200303172
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 21, 2003

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Texas A&M University System, Board of Regents

Request for Information

The Texas A&M University System (A&M System) requests information from law firms interested in representing the System and its component institutions in bond matters. This RFI is issued for the purpose of establishing (for the biennium beginning September 1, 2003) a referral list from which the A&M System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific bond matters and securities law issues as the need arises. These needs include the usual and necessary services of a bond counsel in connection with issuance, sale and delivery of bonds, notes, and commercial paper.

Description. The A&M System comprises nine universities, eight state agencies and a health science center in Texas. Public bond issuance is conducted under two major programs and is rated by at least two major rating agencies. Bonds are issued under authority granted the System in Article VII, §18 of the Texas Constitution (Permanent University Fund). A flexible rate note program with an authorized limit of $80 million is frequently used to finance capital improvement needs of the program. Note sales are normally conducted once or twice each year. As of May 31, 2003, $80 million is issued and outstanding. Current and advance refunding of Permanent University Fund bonds are conducted periodically based on potential savings opportunities. Under authority granted in Chapter 55, Texas Education Code and Chapters 1207 and 1371, Texas Government Code, and other applicable laws, the A&M System also issues revenue bonds for capital improvements. The A&M System employs a revenue bond program, which offers a combined pledge of all legally available revenues with certain exceptions (the Revenue Financing System). A commercial paper program is used for interim financing with long term fixed rate bonds sold to provide more permanent financing. The commercial paper program is presently authorized up to $125 million. As of May 31, 2003, the amount of issued and outstanding commercial paper is $25 million. Current and advance refunding of bonds and escrow restructures of previously defeased bonds, based on market opportunities, may be expected. Federal tax related matters regarding bonds issued by the A&M System, including strategies and management practices in the conduct of a debt program, requires a close working relationship with bond counsel. Contact is frequent, particularly in regard to the Revenue Financing System program due to the significant level of capital improvements anticipated throughout the System over the next two years. The A&M System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of the A&M System's Office of General Counsel. Once the most qualified candidate(s) is selected, the A&M System will negotiate in good faith to award a contract. If negotiations are unsuccessful, the A&M System will negotiate with another qualified firm to provide bond counsel services.

Responses. Responses to this RFI should include at least the following information: [1] a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in bond issuance matters and securities law issues; [2] the names, experience, and technical expertise of the attorneys who may be assigned to work on such matters; [3] appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and bond matters in particular; [4] disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the A&M System or to the State of Texas, or any of its boards, agencies, commissions, universities; or elected or appointed officials); and [5] confirmation of willingness to comply with policies, directives and guidelines of the A&M System and the Attorney General of the State of Texas.

Format and Person to Contact. Three copies of the response are requested. The response should be typed, preferably double-spaced, on 8-1/2 by 11-inch paper with all pages sequentially numbered, either stapled or bound together. Responses should be sent by mail or delivered in person, marked "Response to Request for Information" and addressed to:

Delmar L. Cain, General Counsel Office of General Counsel The Texas A&M University System John B. Connally Building, 6th Floor 301 Tarrow College Station, Texas 77840-7896 Telephone (979) 458-6122 for questions

Deadline for Submission of Response. All responses must be received by the Office of General Counsel of The Texas A&M University

System at the address set forth above not later than 5:00 p.m., June 30, 2003.

TRD-200303114
Vickie Spillers
Executive Secretary to the Board
Texas A&M University System, Board of Regents
Filed: May 19, 2003

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Texas Title Insurance Guaranty Association

Request for Proposal

Notice of Request for Proposals from Certified Public Accountants to provide audit and other professional services for the Texas Title Insurance Guaranty Association ("TTIGA").

Requesting the Proposal: A complete copy of the Request for Proposal ("RFP") may be obtained by writing Burnie Burner, Long, Burner, Parks & DeLargy, 515 Congress Avenue, Suite 1500, Austin, Texas 78701, telephone number (512) 474-1587 or Marvin Coffman, LaShelle, Coffman & Boles, 301 Congress Avenue, Suite 500, Austin, Texas 78701, telephone number (512) 476-5101.

Schedule of Events: To be considered for this engagement, your firm must meet the qualifications and satisfy the requirements set forth in the RFP. All inquiries concerning the RFP must be received by June 2, 2003. Please indicate your intent to submit a proposal by submitting a written Notification of Interest. The Notification of Interest is a prerequisite to submitting a proposal. The Notification may be faxed to Burnie Burner at fax number (512) 322-0301 or to Marvin Coffman at fax number (512) 481-3007 by June 2, 2003.

Further Information: Firms that wish to submit a proposal and wish to obtain additional information related to the TTIGA and its operations should contact Burnie Burner at (512) 474-1587 or Marvin Coffman at (512) 481-3007 to obtain an information packet including the governing statutes and rules, December 31, 2002 financials, the number of checks written during 2002, number of deposits made during 2002, and a copy of the December 31, 2001 Audit.

Deadline for Receipt of Proposals: Three (3) copies of the completed proposal must be received by 5:00 p.m. (CST) on June 9, 2003. Please limit your proposal to twenty (20) pages, including any appendices that you deem pertinent.

Evaluation and Award Procedure: All proposals will be subject to evaluation by the Board of Directors of the TTIGA. The selection and awarding of a contract will be based on criteria and procedures set forth in the RFP; including ability to provide the requested services, demonstrated competence, qualifications and experience, and the reasonableness of the proposed fees. The Board of Directors reserves the right to accept or reject any or all proposals submitted and is under no legal obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The Board of Directors shall pay no costs incurred by any entity responding to this Notice or the RFP. Selection of a firm will be made during the week of June 9, 2003. Certain firms may be interviewed at that time. You will be notified in advance if your company is required to make a presentation.

TRD-200303094
Burnie Burner
Legal Assistant
Texas Title Insurance Guaranty Association
Filed: May 19, 2003

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Texas Department of Transportation

Availability of Draft Environmental Impact Statement

Public Notice - Availability of Draft Environmental Impact Statement: Pursuant to Title 43, Texas Administrative Code, §2.43(e)(4)(B), the Texas Department of Transportation is advising the public of the availability of the approved draft environmental impact statement (DEIS) and Section 4(f) evaluation covering the proposed construction of the eastern extension of the President George Bush Turnpike (PGBT), from SH 78 to IH 30 in the cities of Garland, Sachse, Rowlett, and Dallas in Dallas County, Texas. The proposed project is being developed jointly with the Federal Highway Administration and the North Texas Tollway Authority (NTTA).

The corridor is approximately 10 miles in length and crosses Lake Ray Hubbard. The proposed project involves the proposed construction of a six-lane controlled access tollway on new location. This project would relieve local and regional traffic congestion and improve mobility in northeastern Dallas County. The social, economic, and environmental impacts of the proposed project have been analyzed in the DEIS.

Two Build Alternatives (Alternative #EIS-1 and #EIS-2) and a No-Build Alternative are evaluated in the DEIS. Alternative #EIS-1 is approximately 9.9 miles long and begins at SH 78 and ends at IH 30. It begins to curve in a southeast direction for approximately two miles to intersect with Liberty Grove/Kirby Road. Alternative #EIS-1 then continues south on Kirby Road and crosses Lake Ray Hubbard, to intersect with IH 30 in the vicinity of Peninsula Way. Alternative #EIS-2 is approximately 9.5 miles long and begins at SH 78 and ends at IH 30. It turns northeast and then extends southeast for approximately two miles, to intersect with Liberty Grove/Kirby Road. Alternative #EIS-2 then continues south, along the west side of Kirby Road and crosses Lake Ray Hubbard to intersect with IH 30 in the vicinity of Zion Road. Alternative #EIS-1 would directly impact a National Register-eligible historic property, and the potential impacts to and proposed use of the property are discussed in the Section 4(f) evaluation.

The proposed action also has the potential to impact land use, farmland, single- and multi-family residents, businesses; economics; noise levels; wetlands and jurisdictional waters of the US; floodplains; cultural resources; and hazardous/regulated materials.

Right-of-way requirements for the Build Alternatives range from approximately 428 to 473 acres and the width of the additional right-of-way varies from 350 feet to 1600 feet.

Comments regarding the DEIS should be submitted to Christopher Anderson, Planning Director, NTTA, P.O. Box 260729, Plano, Texas, 75026. The deadline for receipt of comments is 5:00 p.m. on July 14, 2003. Requests for a copy of the DEIS may be addressed to Christopher Anderson at the stated address or by phone: 214-461-2000. A bound copy of the DEIS may be purchased for $60.00 (plus $6.00 for shipping and handling) or a CD of the document in Adobe Acrobat format for $6.00 (plus $1.00 for shipping and handling).

Copies of the DEIS are also be available for review in hard copy format at the following locations.

Garland: Garland Central Library, 625 Austin, Garland, 75040; North Garland Branch Library, 3845 North Garland Avenue, Garland, 75040; Ridgewood Branch Library, 120 West Kingsley, Garland, 75041; South Garland Branch Library, 4845 Broadway Boulevard, Garland, 75043; Walnut Creek Branch Library, 3319 Edgewood Street, Garland, 75042; and Garland City Hall, City Secretary's Office, 200 North Fifth Street, 1st Floor, Garland, 75040.

Rowlett: Rowlett Public Library, 3900 Main Street, Rowlett, 75088; and Rowlett City Hall, 4000 Main Street, City Secretary's Office, Rowlett, 75088.

Sachse: Sachse Public Library, 3815 Sachse Road, Suite C, Sachse, 75048; and Sachse City Hall, 5560 State Highway 78, Sachse, 75048.

Dallas: J. Erik Jonsson Central Library, 1515 Young Street, Dallas, 75201; Dallas City Hall, 1500 Marilla, Room L1BN, Dallas, 75201; and Dallas County, 411 Elm Street, 4th Floor, Dallas, 75202.

Plano: North Texas Tollway Authority (NTTA) Offices, 5900 West Plano Parkway, Suite 100, Plano, 75026.

Mesquite: TxDOT - Dallas District Library, 4777 E. Highway 80, Mesquite, 75150.

TRD-200303106
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: May 19, 2003

Public Hearing Notice--Highway Project Selection Process

In accordance with Transportation Code, §201.602, the Texas Transportation Commission (commission) will conduct a public hearing to receive data, comments, views, and/or testimony concerning the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. A presentation will be given regarding recommendation reports the Texas Transportation Institute produced for the commission involving the Unified Transportation Program restructure. Specifically, five funding categories and their recommended selection processes will be discussed. The five funding categories are as follows: Category 1, Preventive Maintenance and Rehabilitation; Category 2, Metropolitan Area Corridor Projects; Category 3, Urban Area Corridor Projects; Category 4, Statewide Connectivity Corridor Projects; and Category 11, District Discretionary. It is emphasized that the subject of the hearing will be the procedure by which projects are selected in the above funding categories and not the merits or details of specific projects themselves.

The public hearing will be held on Thursday, June 26, 2003, at 9:00 a.m., in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas. The hearing will be held in accordance with the procedures specified in 43 TAC §1.5. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent comments or testimony concerning the selection procedure will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time and repetitive comment. Organizations, associations, or groups are encouraged to present their commonly-held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, or (512) 305-9196 at least two working days prior to the hearing so that appropriate arrangements can be made.

Copies of the criteria/information will be available beginning May 30, 2003, at the Texas Department of Transportation's Riverside Annex, 118 East Riverside Drive, Building 118, Room 2B-6, Austin, (512) 486-5050. Written comments may be submitted to the Texas Department of Transportation, Attention: James L. Randall, P.E., P.O. Box 149217, Austin, Texas 78714-9217. The deadline for receipt of comments is 5:00 p.m. on August 11, 2003.

TRD-200303082
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: May 16, 2003

The University of Texas System

Notice of Intent to Seek a Major Consulting Services Contract

The University of Texas System will seek competitive sealed proposals from consultants qualified to advise the U.T. System in developing a detailed plan to expand the research capability of eight of the University of Texas System academic institutions and to enhance their general institutional effectiveness. A set of strategies and tactics for using current resources to greater effect and for future development of campuses will be sought. Highly focused solutions, aligned with national and state research priorities, are the expected outcome.

The award for the services will be made by a review of competitive sealed proposals that will result in the best value to the University. The U.T. System will base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the service.

Parties interested in a copy of the Request for Proposal should contact:

Ms. Kitt Krejci

Assistant Director

Office of Business and Administrative Services

The University of Texas System

201 West 7th Street, Suite 424

Austin, Texas 78701

Voice: (512) 499-4366

E-mail: kittkrejci@utsystem.edu

The proposal submission deadline will be June 19, 2003 at 5:00 p.m. Central Standard Time.

This notice is being posted in accordance with §2254.029 of the *Texas Government Code*.

TRD-200303175
Francie Frederick
Counsel and Secretary to the Board of Regents
The University of Texas System
Filed: May 21, 2003

Texas Water Development Board

Request for Qualifications for Bond Counsel

The Texas Water Development Board (Board) and Texas Water Resources Finance Authority (Authority) are requesting proposals for

bond counsel services. The deadline for proposal submission is 1:00 p.m., June 16, 2003.

The Board/Authority will make their selection based upon demonstrated competence, experience, knowledge and qualifications. The Board/Authority will then negotiate with the firm(s) selected a contract at a fair and reasonable price. By the Request for Qualification the Board/Authority has not committed themselves to employ bond counsel nor does the suggested scope of service or term of agreement therein require that the bond counsel be employed for any or all of those purposes. The Board/Authority reserves the right to make those decisions after receipt of proposals and the Board's/Authority's decision on these matters is final. The Board/Authority reserves the right to negotiate individual elements of the Firm's proposal and to reject any and all proposals.

Copies of the Request for Qualifications may be obtained by calling or writing Sissie Stacy at (512) 936-2246, fax (512) 463-5580.

TRD-200303161
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: May 21, 2003

Request for Statements of Qualifications Water Research Study Priority Topics

The Texas Water Development Board (Board) requests the submission of Statements of Qualifications (RFQs) from interested applicants leading to the possible award of contracts for state Fiscal Year 2003 to conduct water research on six priority topics. The total amount of the grants awarded by the Board shall not exceed $475,000 from the Research and Planning Fund. Rules governing the Research and Planning Fund (31 Texas Administrative Code, Chapter 355) are available upon request from the Board, or may be found at the Secretary of State's Internet address: http://www.sos.state.tx.us/tac/; then sequentially select, "TAC Viewer," "Title 31," "Part 10," and "Chapter 355." Guidelines for responding to the RFQ, which include an application form and detailed information on the research topic, will be available at the Board's website at: http://www.twdb.state.tx.us/publications/requestforproposals/requestsforproposals_index.htm, or will be provided upon request.

Description of the Research Objectives and Purpose. The Board's grant contribution is estimated not to exceed the posted dollar value adjacent to the priority research topic. RFQs are requested for the following priority research:

Development of Agricultural and Municipal Water Conservation Evaluation Tools ($175,000). Under the 2002 State Water Plan, eleven of the sixteen regional water planning groups utilize conservation as a management strategy to address the projected water needs through the year 2050 for more than 200 water user groups. However, the regional water plans offer few details regarding how these conservation strategies will be implemented, and lack standardized benchmarks from which to measure their success. For the 2007 State Water Plan, regional water planning groups are required to consider water conservation strategies, to a greater extent than before, in their evaluation and selection of strategies to address water supply demands identified in the regional water plans.

Research is needed to develop evaluation tools to measure the success of conservation water management strategies and to identify the most cost-effective regional conservation investments. This research will improve the ability of regional water planning groups to successfully promote, implement, measure, and monitor water conservation programs. This research is also intended to provide technical and staff support for a task force or like entity created to evaluate matters regarding water conservation.

Feasibility Study of Product Water Desalination ($75,000). Large quantities of produced water are brought to the surface in Texas as a result of natural resource extraction activities. Research is needed to assess the economic and technological feasibility of desalting produced water resulting from these activities to develop water of sufficient quality to meet certain local water supply needs and to allow consideration of disposal options other than well injection.

Revise and Update the Texas Guide to Rainwater Harvesting ($25,000). The Texas Guide to Rainwater Harvesting (RWH), published by the Board in 1997, is one of the agency's most popular and requested publications. Research is needed to revise and update the Texas Guide to Rainwater Harvesting to reflect changes in laws and technologies related to rainwater harvesting and to include information on issues that were not adequately addressed in the current publication.

Development of Permitting and Development Decision Model for Desalination Projects in Texas ($50,000). Because few major brackish and no seawater desalination plants have been built in Texas, regulatory requirements for permitting such facilities are not well defined. The resulting lack of formal regulatory guidance in Texas makes desalination project planning difficult and project development strategies uncertain. Research is needed to develop a permitting and development decision model for desalination projects in Texas. Successful completion of the research would result in more effective management of stakeholder processes in water planning and improve decisions regarding the appropriate types of facilities and arrangements to pursue, such as integrated power-generation and water desalination facilities.

Survey and Evaluation of Municipal Water Loss in Texas ($75,000). The municipal water loss data available at the Board is based on a percentage ratio, using sales of water divided by production. Many water systems consider this single facet of water management as the full universe of water loss. However, this is only an intermediate step in the calculation process. Research is needed to more accurately develop municipal water loss estimates across the State. Successful completion of the research would allow the Board to better estimate per capita water use in the future and develop more accurate water demand projections. This would also assist water suppliers in calculating water loss optimizations.

Development of Agricultural Water Use Estimating Methodology ($75,000). The United States Department of Agriculture Natural Resource Conservation Service (NRCS) has recently terminated its long-running, countywide agricultural survey program. This long-term, land use, agriculture, and irrigation data set has been relied upon by the Board to develop statewide agricultural water demand projections. In the absence of additional NRCS surveys, the Board needs to determine another means of developing current agricultural water use estimates and future water demand projections. Research is needed to identify possible substitute methodologies for developing agricultural water use estimates. Successful completion of the research would provide the Board with a new, cost-effective and reliable method for estimating agricultural water use.

Description of Applicant Criteria. The applicant should demonstrate prior experience in the priority research topic, and be able to review, research, analyze, evaluate and interpret data and research findings; and have excellent oral presentation and writing abilities. If the applicant is short-listed, the applicant should be prepared to make an oral presentation to staff members of the Board. The scope of work, schedule, and contract amount will be negotiated after the Board selects the most qualified applicant. Failure to reach a negotiated contract may result in

subsequent negotiations with the next-most qualified applicant; however, a negotiation will not occur with applicants who are determined by the Board to be unqualified, or otherwise unsuited to perform the requested research. Applicants that are selected to conduct the research may be required to present the results of their research at one or more of the Board's monthly public meetings.

Deadline for Submittal, Review Criteria and Contact Person for Additional Information. Historically Underutilized Businesses are encouraged to submit Statements of Qualifications and/or participate as sub-contractors in the water research program. Ten double-sided, double-spaced copies of a completed Statement of Qualifications must be filed with the Board prior to 5:00 PM, June 30, 2003. Respondents to this request shall limit their Statement of Qualifications to the size previously mentioned, excluding the resumes of the project team members. Statements of Qualifications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, Room 448, 1700 North Congress Avenue, Austin, Texas; or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231--Capitol Station, Austin, Texas 78711-3231. *All applicants must contact the Board to obtain the Board's guidelines for responding to the RFQ. Applicants wishing to submit a Statement of Qualifications on the topic entitled "Development of Agricultural and Municipal Water Conservation Evaluation Tools" must attend a pre-submittal meeting at 9:00 AM on June 17, 2003 in Room 118 of the Stephen F. Austin State Office Building in order to submit a responsive Statement of Qualifications.* Requests for information, the Board's guidelines for responding to the RFQ, and detailed information on each research topic should be directed to Ms. Phyllis Thomas at the preceding address, by calling (512) 463-7926, or by e-mail to: phyllis@twdb.state.tx.us.

TRD-200303162
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: May 21, 2003

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Texas Workers' Compensation Commission

Request for Information

Outside Counsel for Litigation Related to Medical Quality of Care and Utilization Issues within the Texas Workers' Compensation System

The Texas Workers' Compensation Commission (TWCC or Commission) requests information from law firms interested in representing the Commission in litigation and contested administrative hearings anticipated as a result of the Commission's implementing certain procedures designed to control and lower medical costs while ensuring the delivery of quality medical care within the Texas workers' compensation system. Historically underutilized businesses (HUBs) and firms that encourage and include the participation of minorities and women in the provision of legal services are encouraged to submit information in response to this Request for Information (RFI).

TWCC has been authorized by the Attorney General to issue this RFI in order to establish a list of qualified firms from which TWCC, by and through its Director of Legal Services, will select appropriate counsel in one or more contracts for legal representation and advice for matters arising between June 1, 2003 and August 31, 2005. Any contract entered into by the Commission, engaging outside counsel as a result of this RFI, is subject to approval by the Texas Attorney General.

Description. TWCC is required by law to maintain a list of approved doctors who are authorized to provide health care services within the workers' compensation system. TWCC is also authorized to impose sanctions against a doctor, including the suspension or removal of a doctor from the Approved Doctor List (ADL). During the 77th legislature, TWCC was authorized to accept a grant from the Texas Mutual Insurance Company (TMIC) for the purpose of enabling the Commission to "implement specific steps to control and lower medical costs in the workers' compensation system and to ensure the delivery of quality medical care." A grant of approximately $2.2 million was approved by the TMIC Board of Directors on February 26, 2003, and accepted by the Commission on April 17, 2003. The Commission has identified a number of strategies that it will implement under the grant to achieve these statutory goals related to utilization control and quality of care.

As a result of the Commission's efforts to reduce medical over-utilization and inappropriate medical care within the Texas workers' compensation system, the Commission expects that there will be legal challenges from doctors who are notified of intended sanctions or that their applications to be on the new ADL, effective as of September 1, 2003, will be denied. These challenges may arise in the State Office of Administrative Hearings or in state or federal courts throughout the State of Texas.

Selection Criteria. To effectively address these legal challenges, the Commission will require legal representation from counsel familiar with medical quality of care and utilization review issues, as well as administrative law and constitutional due process issues, and who can dedicate a substantial amount of time to these cases. Subject to the approval of the Attorney General, TWCC will engage outside counsel with substantial litigation experience and experience in matters involving medical quality of care and utilization issues. Outside counsel must: (1) have a working knowledge of medical terminology and experience in eliciting expert medical witness testimony both in depositions and at trial; (2) be experienced in conducting medical witness depositions and propounding and responding to all forms of discovery, particularly involving issues of medical quality of care and utilization; (3) be experienced and available to engage in a full motion practice concerning discovery matters as well as constitutional issues and issues of jurisdiction, venue, and governmental immunity; (4) be able to dedicate a substantial amount of time to matters assigned, including availability to travel for depositions and to meet witnesses; and (5) be admitted to practice in federal district courts throughout the state of Texas.

TWCC invites responses to this RFI from qualified firms to provide legal representation and advice under the direction and supervision of TWCC's Director of Legal Services. Responses to this RFI should include the following information: (1) a description of the firm's qualifications, identified by specific attorneys within the firm, to perform the required legal services, including prior litigation experience and other legal representation involving medical quality of care and utilization issues; (2) the names, experience, and expertise of attorneys within the firm who may be assigned to work on such matters; (3) availability of the lead attorney and others assigned to the project to begin working on a particular matter within 24 hours after receiving notification by TWCC that a contested case hearing has been requested or that a lawsuit has been filed; (4) information concerning the firm's fees (either in the form of hourly rates for each attorney who may be assigned to perform services, comprehensive flat fees, or other goal-specific fee arrangements), billable expenses, and expense rates; (5) a description of the procedures to be used by the firm to supervise and ensure the provision of legal services in a timely and cost-effective manner; (6) a disclosure of conflicts of interest, identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to TWCC or the State of Texas; (7) a certification that the firm has not represented clients before TWCC within the six month period preceding the date of this RFI and that it will not represent any such clients for a six-month period

following the termination of the contract; (8) a description of procedures to be used by the firm to avoid future conflicts of interest during the expected term of the contract through August 31, 2005; and (9) if available, any information identifying the firm as a HUB or demonstrating the firm's efforts to encourage and include the participation of minorities and women in the provision of legal services.

Contact Information. Responses to this RFI should be sent by mail, facsimile, electronic mail, or delivered in person, marked "Response to Request for Information," and addressed to Craig H. Smith, Director of Legal Services, Texas Workers' Compensation Commission, 4000 South IH-35 MS-4D, Austin, Texas 78704-7491; craig.smith@twcc.state.tx.us; FAX (512) 804-4276 (for questions, telephone (512) 804-4278).

Deadline for Submission of Response. The Commission must receive responses to this RFI in the manner set forth above no later than 5:00 p.m. on Friday, June 27, 2003.

TRD-200303170
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: May 21, 2003

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code*** (***TA***C) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TA***C.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TA***C, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.............950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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